S.C.C. File No.: 36816

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR NEWFOUNDLAND AND LABRADOR)

B E T W E E N:

SCOTT DIAMOND

APPLICANT
(Appellant)

-and-

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR AND HER MAJESTY THE QUEEN IN RIGHT OF CANADA

RESPONDENTS
(Respondents)

FACTUM OF THE APPELLANT
SCOTT DIAMOND

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

INTRODUCTION

1. The Appellant, Scott Diamond, was arrested following a traffic stop and subsequent search. He made an application to exclude evidence located during the stop and search on the grounds that his rights under section 8 of the *Canadian Charter of Rights and Freedoms* ("*Charter"*) were violated. He also argued that the officer did not have grounds for the arrest and that, as such, the arrest was not legal and constituted a breach of s. 9 the *Charter*.

2. The Appellant concedes that the search incidental to arrest would be legal if the arrest is ultimately found to be lawful. This was the same position taken at trial during the *voire dire* and at the Newfoundland and Labrador Court of Appeal ("Court of Appeal").

3. The Trial Judge denied the application and the Appellant appealed to the Court of Appeal.

4. The Court of Appeal upheld the Trial Judge's decision with a 2 to 1 majority. Harrington, JA with Welsh J.A. concurring held that the Trial Judge conducting the *voir dire* hearing did not err in finding that: the officer's actions at the side of the road did not constitute a search; the seizure of the knife was justified base on the plain view doctrine; the officer had reasonable and probable grounds to arrest the accused; and, that the seizure of the cocaine was justifiable as incidental to the arrest of the accused.[1]

5. Justice White, writing in the minority, found that there was a search but that it was justified on the grounds of officer safety. Justice White concluded however that the plain view doctrine did not apply to the seizure of the knife and that the police officer did not have reasonable and probably grounds to arrest the Appellant and that the arrest and subsequent search constituted a violation of the Appellant's section 9 rights.

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[1] *R. v. Diamond*, 2015 NLCA 60 ("Court of Appeal Decision", at para. 27, [Appellant's Record ("AR") Tab 1B].

6. The Appellant agrees with Justice White's recommended disposition but does not agree that the search was justified on the grounds of officer safety.

7. The Appellant is requesting that this Honourable Court adopt the disposition proposed by Justice White on the issue of whether there was a search of the Appellant's vehicle and whether the arrest was lawful.

FACTS

8. The factual background of this matter was not in dispute and succinctly set out in the majority decision of the Newfoundland and Labrador Court of Appeal.

9. The Appellant was convicted in 2014 by a Provincial Court Judge of two counts: unlawful possession of a weapon dangerous to the public peace; and, unlawful possession of cocaine for the purpose of trafficking.

10. The charges were laid after the Appellant was stopped and searched by a member of the Royal Canadian Mounted Police ("RCMP").

11. The conviction followed the Appellant's unsuccessful attempt to have the evidence against him excluded on the basis that the search of his vehicle and subsequent arrest and search of his person violated sections 8 and 9 of the *Charter*. A *voire dire* was conducted on the issue of admissibility of the evidence seized by the RCMP on September 27, 2012.[2]

12. Two witnesses testified during the *voire dire*; Constable Blackmore of the RCMP and the Appellant.

13. Cst. Blackmore testified that at 12:55 am on September 27, 2012 he was on patrol by himself on Hamilton River Road, Happy Valley-Goose Bay, Newfoundland and Labrador. When

[2] *R. v. Diamond* 2014 CarswellNfld 195 ("Trial Decision") [AR Tab 1A].

he observed a black 2010 Chevrolet Silverado truck, bearing licence plate number CTD 424, driving ahead of him and heading towards the part of the community known as the "the valley".

14. Cst. Blackmore contacted his dispatcher and learned that the vehicle was registered to the Appellant.

15. Cst. Blackmore testified that this vehicle accelerated to a speed of 80 kilometers an hour in a 50 and 60 kilometre speed zone. It is unclear whether he stopped the vehicle in the 50 or 60 km zone. It is also unclear what the Appellants exact speed was prior to his accelerating to 80 kilometres an hour. The speed of the Appellant's vehicle is not germane to this appeal.

16. Cst. Blackmore testified that he then spoke with another police officer, Cst. McLean, who was stationed in the nearby community of Sheshatshiu.

17. Cst. Blackmore testified that Cst. McLean:

> advised me [Blackmore] that the registered owner was arrested by the police earlier, he didn't say what date, for drugs and he also advised that he had a police scanner and when they arrested him he had a machete knife.[3]

18. Cst. Blackmore, after speaking with Cst. McLean, notified the dispatcher that he was "going to go roadside" with the vehicle.

19. The Court of Appeal asked the officer if he stopped the vehicle because of speeding and the officer testified that yes it was, in response to the Trial Judge.

20. Cst. Blackmore pulled the Appellant over to the roadside and upon approaching the Appellant's vehicle noticed a police scanner above the driver's side visor.

21. The officer did not testify that the scanner was illegal or provide any grounds for the assertion that its presence was prohibited.

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[3] Voire Dire Transcript, at p 17, lines 11-14, [AR Tab 3].

22. The Appellant identified himself to the officer and Cst. Blackmore advised the Appellant that he was speeding and asked for his licence and registration.

23. Cst Blackmore testified that the Appellant advised him that he could not find his license and registration:

> So I asked him to check the glove box where most people keep their licence, registration and insurance. With the movement of Mr. Diamond to the glove box I observed that he was sitting on money, I looked in the vehicle and that is when I observed a knife in the driver's side door. The knife was a large knife, like a hunting knife and I informed Mr. Diamond he was under arrest for the possession of a knife dangerous to the public.[4]

24. The knife was located inside the pocket situated at the bottom of the driver's side door.

25. The officer testified that when the Appellant leaned over he was able to see the knife located in the door pouch when he looked inside the vehicle with his flashlight.

26. Cst. Blackmore testified that he owned a vehicle similar to the Appellant and that he was 5 feet, 6 inches tall and that his vehicle came to his mid-chest. He agreed that if the Appellants vehicle had a lift kit and larger tires it would have been higher and resultantly higher relative to his own height.

27. Cst Blackmore, under cross examination, admitted that he placed his head and arms inside the cab of the vehicle to look around the interior. This was the exchange between counsel for the Appellant and the officer:

> Q. Now, you also described the inside, the inside of the door. Now, you said that the pouch that the knife was found in was at the very bottom of the door, as you would expect, you know, down by your feet and that there was an arm rest parallel.
>
> A. It was parallel yes.
>
> Q. That did not obscure your vision?

[4] Voire Dire Transcript, at page 18, lines 4-10 [AR Tab 3].

A. No. I leaned in the vehicle as –

Q. So you actually leaned inside the vehicle?

A. When he went over to reach for that, as I have stated then I went in –

Q. So you weren't standing outside the vehicle observing the knife, you actually stuck your head and face inside the vehicle.

A. Yes.

Q. So you are 5 foot, what did you say again, 5 foot 6?

A. Five foot, six, yes.

Q. Five foot, six, the truck is mid-chest, you are actually inside the vehicle in through the open door, open window, so the window is rolled all the way down, right?

A. Yes.

Q. Okay, so the window is rolled all the way down and you have actually got your body partially inside the truck.

A. I didn't say that. I said I went and looked inside the vehicle with my head.

Q. But in order to look inside the vehicle at least part of you had to come inside the truck? Your head?

A. No, no, my head but not part of my body.

Q. Your head is not part of your body officer?

A. Not, I meant, not my chest.

Q. Okay. But your head was inside the vehicle.

A. Yes.

Q. Okay, your head is inside the vehicle, you've got your flashlight.

A. Yes.

Q. Okay and you are searching inside the vehicle with the flashlight.

A. I'm not searching, I'm looking.

Q. That is semantics officer, I am asking you. Your head was inside the vehicle, one would assume too that your arms are also inside because you had to move the flashlight around.

A. Yes.

Q. Okay so now it is your head and your arms inside the vehicle.

A. The flashlight.

Q. Yea, and you are moving around, looking around.

A. Yes.

Q. Were you standing on your tippy toes to look in?

A. I can't recall.

Q. I would imagine that you would have actually had to make some effort to look around that arm rest if it is what I picture in my mind as you describing it. You would have to look around that armrest right?

A. It runs parallel.[5]

28. The Appellant testified that his vehicle was a 2010 Chevy Silverado that had a 4 inch lift kit and 20 inch tires. The vehicle owned by the officer and used for comparison had no lift kit and had 17 inch tires.

29. The Appellant estimated that the lift kit added an additional 3.5 inches to the height of his vehicle and the larger tires added a couple more inches to the height.

30. The officer could not remember how high the Appellant's vehicle was or where it came up to his chest. He based his opinion on his own vehicle and his evidence did not contradict the evidence of the Appellant.

31. The Appellant testified that the knife was in the bottom of the pouch located on the door and that the pouch was about 8 inches deep and that, in his opinion, the knife could not have been visible unless someone was looking directly into the pouch.

32. The Appellant estimated that the window on his truck would have come to just below the neck of Cst Blackmore. The Appellant is the same height as the officer and that the window was level with his shoulders.

[5] Voire Dire Transcript, at page 26, line 16 to page 28, line 20 [AR Tab 3].

33. The Appellant testified that the trucks height required that he use the step rail to enter the vehicle.

34. The Appellant was asked to exit the vehicle and he was placed in hand restraints and frisked by the officer. During the search an individual baggie of what was later found to be cocaine fell to the ground.

35. The Appellant was subsequently strip searched at the detachment and additional 28 individual baggies were located on his person.

36. The total amount of cocaine recovered from the Appellant was approximately 12 grams.

POSITION OF THE APPELLANT

37. The Appellant is, pursuant to s. 691(1)(a) of the *Criminal Code of Canada*, appealing the decision of the Court of Appeal to admit the knife and drugs seized as evidence against the Appellant.

38. The Court of Appeal erred on a question of law when it determined that the inspection of the Appellants vehicle did not constitute a search and that it was lawful. The Appellant maintains that the inspection was a search and was done without warrant.

39. The Court of Appeal erred on a question of law in concluding that the plain view doctrine applied in the case at bar. The Appellant maintains that the preconditions necessary for successful application of the doctrine where not present in this case.

40. The Appellant submits that the Court of Appeal erred on a question of law in concluding that the arrest of the Appellant for the knife was lawful and therefore any search incidental to arrest, based on his arrest for the knife, was not justified.

41. The cocaine discovered from the search incidental to arrest and strip search at the police station should have been excluded and the Appellant acquitted as a result of there being no admissible evidence.

CONCESSIONS BY THE APPELLANT

42. The Appellant concedes that the officer was authorised to conduct the traffic stop and that the stop itself was valid.

43. The Appellant also concedes that if this Honourable Court finds that the arrest of the accused was lawful than the search incidental to this arrest and resulting in the discovery of the cocaine, was also lawful

PART II – STATEMENT OF ISSUES

44. The issues in this appeal are:

1. Did the Court of Appeal err when it concluded that Cst. Blackmore's inspection of the Appellant's vehicle was authorized by law and did not constitute a search?

2. Did the Court of Appeal err when it determined that the arrest of the Appellant for possession of the knife pursuant to s. 88 of the *Criminal Code of Canada* was lawful?

3. Did the Court of Appeal err when it determined that the Appellant's rights under the *Charter* were not infringed?

PART III – STATEMENT OF ARGUMENT

ANALYSIS

The Officer did conduct a search

45. The Court of Appeal erred in law when they concluded that the officer's investigation of the car was not a search and/or was authorized by law.

46. The Appellant maintains that the officer's decision to enter the vehicle, converted the inspection to a search and that the Majority erred in determining that it was not a search.

47. This Honourable Court advises that:

> not every form of examination conducted by the government will constitute a "search" for constitutional purposes. On the contrary, only where those state examinations constitute an intrusion upon some reasonable privacy interest of individuals does the government action in question constitute a "search" within the meaning of s. 8.[6]

48. The Appellant acknowledges that there is a diminished expectation of privacy in a motor vehicle and that motorists are subject to police traffic stops. This does not mean, however, that there is no expectation of privacy.

49. The Supreme Court of Canada has ruled that vehicles are places in which individuals have a reasonable, albeit reduced, expectation of privacy.[7]

50. The Officer's actions therefore fall within the definition of a search as set out in *Evans*.

51. The officer's intrusion into the vehicle was similar to the officer's actions in *Mellenthin*[8] when he asked what was in the driver's bag. The Appellant in *Mellenthin* had a reasonable expectation of privacy with respect to the bag in his vehicle. The officer in *Mellenthin*, would not have been able to see what was inside the gym bag had the officer's questions not resulted in the driver showing the officer the bag.

52. Cst. Blackmore could not have seen what was inside of the door pouch had he not intruded into the vehicle's interior. The Appellant had a reasonable expectation of privacy in those parts of his vehicle that were not readily visible to an outside observer. In both *Mellinthin* and this case, the items were discovered in an area over which the driver had a reasonable expectation of privacy.

53. The Court of Appeal and Trial Judge found that the height of the vehicle made the intrusion necessary for the officer to look inside the vehicle. The Appellant submits that the

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[6] *R. v Evans* [1996] 1 S.C.R. 8, at para. 11 [Appellant's Book of Authorities ("ABA") Tab 4].
[7] *R. v. Belnavis*, [1997] 3 S.C.R. 341 (S.C.C) [ABA Tab 1].
[8] *R. v. Mellenthin* [1992] 3 S.C.R. 615 (S.C.C.) [ABA Tab 9].

height of the vehicle also made the expectation of privacy greater as the general public would not be able to see inside such a vehicle without entering the vehicle.

54. Justice White, writing in the minority, concluded that:

> The question has arisen whether or not the Supreme Court of Canada in *Mellenthin* determined that there was no search when the officer used a flashlight to see what his unaided eyes could not, or whether there was a search but it was justified for reasons of officer safety.
>
> It is, however, unnecessary to attempt to resolve this debate in this case because the facts are entirely distinguishable. There is closer to a bright line standard governing cases where the police place themselves *into the interior* of a vehicle as there is a reasonable expectation of privacy in the interior of a vehicle. If the police activity invades a reasonable expectation of privacy, then the activity is a search (*R. v. Wise*, [1992] 1 S.C.R. 527 (S.C.C.), at 533, *R. c. Law*, 2002 SCC 10, [2002] 1 S.C.R. 227 (S.C.C.), at para. 15).
>
> A police officer is either outside the vehicle conducting a visual inspection, whether aided by a flashlight or not, or inside the vehicle to such extent that he can see items it would be impossible to see from outside and the public's access to which the owner of the vehicle has sought to restrict. The degree of intrusion in the case at bar is no different in principle to the officer opening the door and sitting on the car seat. There is either an intrusion into the vehicle or there is not. Here there was, resulting in a warrantless search.
>
> The conclusion of my colleague that there is no search when a police officer enters the physical space of a vehicle driven by its owner, with or without the assistance of a flashlight, is unprecedented. The Supreme Court of Canada has confirmed that the driver and owner of a vehicle has a reasonable expectation of privacy in its interior (*Tessling* at para. 22, *R. v. Belnavis*, [1997] 3 S.C.R. 341 (S.C.C.) at para. 26, *Wise* and *Mellenthin*. See also *R. c. Higgins* (1996), 141 D.L.R. (4th) 737, 111 C.C.C. (3d) 206 (C.A. Que.), *R. v. Christie*, 2013 NBCA 64 (N.B. C.A.)). In *Belnavis* at paragraph 26, Cory J. of the Supreme Court of Canada, agreed with the Ontario Court of Appeal (see *R. v. Belnavis* (1996), 29 O.R. (3d) 321, 107 C.C.C. (3d) 195 (Ont. C.A.)), that the officer's presence inside of the vehicle constituted a warrantless search which violated section 8 of the *Charter*.[9]

[9] Court of Appeal Decision, at paras. 32 – 35 [AR Tab 1B].

The Search was warrantless and cannot be justified

55. A warrantless search is *prima facie* unreasonable, and once an accused has demonstrated that a search was warrantless, the Crown has the burden of showing that the search was, on a balance of probabilities, reasonable.[10]

56. As stated by Mr. Justice Sopinka, for the majority, in *R. v. Feeney*,

> …*Collins, supra* outlines three requirements for a search to be reasonable: (a) the search was authorized by law; (b) the law authorizing the search was reasonable, and; (c) the manner in which the search was conducted was reasonable.[11]

57. All three requirements must be met, if not, the warrantless search is a breach of Section 8 of the Charter. The officer's search was not authorized by law, it was also unnecessary and unreasonable and therefore constituted a breach of s. 8 of the Charter

58. The Appellant had identified himself to the officer, the officer knew the vehicle was registered in the Appellant's name and the Appellant was in the process of looking for his licence and registration. The Appellant was complying with his obligation under the *Highway Traffic Act*[12]. The Appellant submits that the act of placing his head and arm or arms inside the vehicle was not connected with the officer's duties under the *Highway Traffic Act*.

59. Cst. Blackmore had the authority, pursuant to s. 201.1 (1) of the *Highway Traffic Act* to stop a vehicle and;

> (a) require him to give his name, date of birth and address to the officer;
>
> (b) require him to produce his licence, and the vehicle's insurance certificate and registration and another document respecting the motor vehicle requested;
>
> (c) inspect an item produced under paragraph (b);
>
> (d) request information from him about whether and to what extent he had consumed alcohol or drugs before or while driving;

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[10] *R. v. Collins* [1997] 1 S.C.R. 265, at para. 33 [ABA Tab 3]
[11] *R. v. Feeney* [1997] 2 S.C.R. 13 (SCC), at para. 169 [ABA Tab 5].
[12] *Highway Traffic Act*, RSNL 1990 Chapter H-3 [ABA Tab 12].

(e) require him to go through a field sobriety test;

(f) request information from him about whether and to what extent he is experiencing a physical or mental condition that may affect his driving ability; and

(g) inspect the motor vehicle's mechanical condition and request information from him about it.

60. The Trial Judge speculated and the Court of Appeal accepted that the search conducted by Cst. Blackmore was necessary to ensure officer safety. There was, however, no evidence that the officer's safety was in jeopardy. The Appellant was not acting in a threatening or uncooperative manner, showed no signs of impairment and did not, to the officer's knowledge, have a history of criminality.

61. The Trial Judge found, as a basis for concluding that officer safety was an issue, that:

> The officer in advance radioed his intention to stop this vehicle. At dispatch, since he was a single officer on patrol in the darkness of night, he was told to exercise caution. He cannot be said to have anticipated the finding of a knife or contraband, but I am satisfied that he was operating in a "caution" mode. He was operating on the basis of an observed speeding infraction but, since he was alone, in the dark, and told to be cautious, I am satisfied that he needed to take a reasonably thorough view of the vehicle.
>
> Police work is a dangerous job, particularly when one is unaccompanied in the dead of night. Vehicles are capable of transporting weapons, armaments and contraband. People in the position of the Applicant are entitled to an expectation of privacy in the operation of motor vehicles, albeit the expectation is somewhat reduced when serious infractions of the *Highway Traffic Act* are noted.
>
> Where speed is a factor, the officer must be attentive to the possibility of impairment by alcohol or drugs. Where one is alerted to the possibility of the presence of a knife, one might also be expected to rotate one's flashlight around to check the environment. This was not an open convertible or sports car which the officer could survey from above. **In order to view the vehicle in a proper manner to address the concern of impairment or personal safety around the possible presence of a weapon, the skills of a gymnast were not needed. Nonetheless, the height of the vehicle required the head of the officer and the flashlight to minimally enter the open window area and the knife was seen immediately.** [emphasis added][13]

[13] Trial Decision, at paras. 10 – 12 [AR Tab 1A].

62. Justice Harrington, agreed:

> The judge found that the officer minimally inserted his head and a hand holding a flashlight inside the vehicle only briefly, to assess his immediate surroundings for his own safety. This minimal intrusion was necessary due to the height of the truck. I agree with his finding that this did not constitute a search.[14]

63. Justice White found that there was a warrantless search but also found that it was justified for officer safety reasons.

> The only real justification offered for the search was that it was required for officer safety. The officer did not testify that he feared for his safety and he could, if safety was his primary concern, have chosen to wait for backup. Instead, he placed himself into the vehicle with a man he thought might have been armed with a knife.
>
> I am, nevertheless, mindful that he had been advised to be cautious.
>
> While the stated concerns for officer safety were rather vague and perhaps a different conclusion was available, considering all of the circumstances and the law as set out by the Supreme Court of Canada in *R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59(S.C.C.) and *R. v. MacDonald*, 2014 SCC 3, [2014] 1 S.C.R. 37 (S.C.C.), I cannot say that the trial judge made a palpable and overriding error in finding that officer safety was a concern. There was a warrantless search but it was justified for officer safety reasons.[15]

The search was not necessitated by officer safety.

64. The Officer did not claim to have any concerns about his safety. The issue of officer safety was raised as a potential justification by the Trial Judge on his own and not by the officer's evidence.

65. The necessity and legality of officer safety searches in not challenged. There are, however, limits that have been set forth by this Honourable Court.

> But although I acknowledge the importance of safety searches, I must repeat that the power to carry one out is not unbridled. In my view, the principles laid down

[14] Court of Appeal Decision, at para. 18 [AR Tab 1B].
[15] Court of Appeal Decision, at paras. 38 – 40 [AR Tab 1B].

> in *Mann* and reaffirmed in *Clayton* require the existence of circumstances establishing the necessity of safety searches, reasonably and objectively considered, to address an imminent threat to the safety of the public or the police. Given the high privacy interests at stake in such searches, the search will be authorized by law only if the police officer believes on reasonable grounds that his or her safety is at stake and that, as a result, it is necessary to conduct a search (*Mann*, at para. 40; see also para. 45). The legality of the search therefore turns on its reasonable, objectively verifiable necessity in the circumstances of the matter (see *R. v. Tse*, 2012 SCC 16, [2012] 1 S.C.R. 531 (S.C.C.), at para. 33). As the Court stated in *Mann*, a search cannot be justified on the basis of a vague concern for safety. Rather, for a safety search to be lawful, the officer must act on "reasonable and specific inferences drawn from the known facts of the situation" (*Mann*, at para. 41).[16]

66. The Appellant submits that the "reasonable and specific inferences drawn from the known facts of the situation"[17] would not justify a safety search.

67. The Trial Judge drew general inferences applicable to almost any late night traffic stop, noting that the officer was alone, it was night time and he had pulled a driver over for speeding. The only factor unique to the Appellant was that he had been warned to be cautious because on a previous unspecified occasion he had been arrested for drugs and had been in possession of a knife.

68. The Appellant would suggest that this may constitute a suspicion but it does not constitute reasonable grounds. Justice White referred to the "stated concerns for officer safety as rather vague" and the majority simply did not consider the reasonableness of the concerns and adopted them without discussion.

69. The decision of the Court of Appeal to accept the Trial Judge's finding that the search was justified on the grounds of officer safety is problematic. While White, JA does invoke the test in *MacDonald* he then proceeds to conclude that concern could be inferred from the overall

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[16] *R. v. Macdonald* [2014] 1 S.C.R. 37 (SCC), at para. 41 [ABA Tab 8].
[17] *Macdonald, supra,* at para. 41 [ABA Tab 8].

circumstances and the fact that he had been cautioned by another officer, absent any statement of concern from the officer[18].

70. The Applicant would suggest that this represents a significant departure from the requirement in *MacDonald* that, as a precondition to a valid warrantless search, that the officer have reasonable grounds to believe that there was imminent threat to public and police safety and that search was necessary to eliminate that threat.

The Court erred in finding that the Plain View Doctrine applied.

71. The majority held that the plain view doctrine applied to this case. This was an error.

72. The requirements for the plain view exception are undisputed:

(a) the police officer must be lawfully in a position from which the item is in plain view,

(b) the discovery of the evidence must be inadvertent and the officer must not have knowledge of the evidence in advance, and

(c) the evidentiary nature of the item must be immediately apparent to the officer through the unaided use of his or her senses.[19]

73. The Crown argued that the knife was seized because it was in plain sight and therefore did not constitute a search.

74. Trial Judge agreed with the Crown:

> The Crown argues that the discovery of the knife brings into play the "plain view" doctrine. The Applicant argues an intrusion of his vehicle was a warrantless search in violation of the *Charter of Rights and Freedoms* and was a search which in the circumstances cannot be justified by the Crown.
>
> I am persuaded to the view of the Crown in this respect for the following reasons:
>
> 1. The initial stop was based on a clear statutory violation (speeding). It was

[18] Court of Appeal Decision, at para. 40 [AR Tab 1B].
[19] Court of Appeal Decision, at para. 19 [AR Tab 1B].

not based on a "hunch" or an anonymous tip.

2. For the reasons I have stated, I believe that the finding of an unsheathed knife was inadvertent. The officer did not expect to find a knife. Nor was he given any information from dispatch as to whether the knife in question was a switchblade, a dagger, a jackknife, a machete, or a hunting knife. All the officer did was a routine scan of the vehicle with his flashlight as he had to do in that place and that circumstance and the physical dimensions of the vehicle required a minimal insertion of head, hand and flashlight far enough through the open window to allow a view of this large knife, unsheathed and available for ready use in the lower door compartment on the driver's side of the truck.[20]

75. This case can be compared to *Belliveau* in which Hoyt J.A. commented that precise objects were being sought and were found, "…thus, their discovery could hardly be termed inadvertent."[21] He commented that even though the search was of a more general nature (looking for drugs), the Court found that: "…the officers had, however, before this discovery, already made up their minds that they were going to search [his] vehicle". Hoyt J.A. added: "…they cannot now justify the search by their subsequent discovery of the bolt cutters and machete…. The sighting of bolt cutters and a machete by the officers, while perhaps unlikely or unusual, can in these circumstances hardly be termed inadvertent". [22]

76. The Appellant submits that Cst. Blackmore's discovery of the drugs, scanner and knife could not be inadvertent because he had been alerted by Cst. Mclean, immediately before approaching the Appellant's vehicle, about the possibility that the Appellant was carrying a large knife, a scanner and drugs.

77. This prior information could only have been reinforced when the officer saw the scanner in the vehicle. It would be a logical conclusion that if the Appellant had a scanner just as Cst. McLean had warned than it would be likely that he might also have a knife.

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[20] Trial Decision, at paras. 15-16 [AR Tab 1A].
[21] *R. v. Belliveau*, 75 N.B.R. (2d) 18 (N.B.C.A.) [ABA Tab 2] cited in *R. v. Ruiz*, 1991 CanLII 2410 (NB CA), at page 7 [ABA Tab 10].
[22] *R. v. Ruiz, supra*, at page 7 [ABA Tab 10]

78. Constable Blackmore's short stature, the height of the 2010 Chevy Silverado as testified to by the Appellant and Cst. Blackmore and the location of the knife made it highly improbable that Cst. Blackmore could have been able to see the knife had he been anywhere but inside the vehicle.

79. As detailed above, Cst. Blackmore had no legal justification for intruding himself into the cabin of the vehicle. He was, therefore, not in a lawful position when he purportedly viewed the knife.

80. For these two reasons, prior knowledge and the fact that the officer was not in a legal position to view the knife, that the plain view exception is not available as a justification for the seizure of the knife. This was also the opinion of Justice White:

> Unlike my colleague, I do not accept that the plain view doctrine is applicable to this case. The question to be determined is whether or not the officer's presence in a vantage point from which the knife was viewable, that is inside the vehicle, was lawful. Once the officer was inside the vehicle he could see items he could not see from the exterior. If his entry into the vehicle was justified by law, the search is lawful. If it is not — the item is not in plain view and the search that began unlawfully cannot become lawful because evidence is discovered. Here, the knife was in the side pocket on the lower portion of the driver's side door. It was impossible to see it without entry into the vehicle.[23]

81. This was in contrast to the position of the Majority who concluded that the officer saw the unsheathed knife in the course of a lawful visual inspection of the truck and therefore fell within the ambit of the plain view doctrine.

82. It is also noteworthy that the Court of Appeal found that the prior knowledge of the possible presence of a knife justified a search for officer's safety while also finding that there was no prior knowledge of a knife that would prevent the application of the plain view doctrine. The Appellant would suggest that such a contradictory position was illogical. .

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[23] Court of Appeal Decision, at para. 37 [AR Tab 1B].

The arrest of the Appellant was not lawful.

83. The Appellant argued at trial and on appeal that even if the discovery of the knife in the vehicle was lawful it did not provide reasonable and probable grounds for arresting him.

84. Cst Blackmore explained his grounds for arresting the Appellant as follows during questioning by the Crown:

> Q: Thank you and I think my friend for keeping me in line. So, can you just reiterate or go into a little bit greater detail about why it was that you made the arrest? On what grounds you made the arrest?
>
> A: He was in possession of a weapon that was dangerous to the public.
>
> Q: And at what point did you draw that conclusion?
>
> A: When I seen [sic] the knife that he had in arm's reach in the side of his door.[24]

85. Counsel for the Appellant argued at the *voire dire* and on appeal that the mere presence of the knife, absent any evidence of criminal activity, did not constitute valid grounds for arresting the Appellant.

> The only justification that the officer can have for searching Mr. Diamond is incidental to arrest. We would suggest that the arrest was not lawful because #1 the evidence was obtained wrongfully, the knife was obtained wrongfully and #2 even if the knife was found correctly it is not in and of itself the legal subset that warrants an arrest. There is no issues with officer safety, there are other means, he had back up there in minutes. There is nothing inherently illegal about owing a knife or having it safely stored in a pouch. Nothing that would warrant an arrest. Therefore there is no reasonable and probably grounds for arresting Mr. Diamond. So even if you accept that the evidence should come in which you suggested it cannot, the knife was obtained illegally. There still exists no reasonable and probable grounds for arresting Mr. Diamond and searching him. The police had no evidence of illegal activity, there is no issue of police safety. He didn't ask to hand the knife over, he didn't take the knife. Mr. Diamond wasn't acting in a threatening manner. That violates section 8, it violates section 9.[25]

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[24] Voire Dire Transcript, at page 25, lines 3-11 [AR Tab 3].
[25] Voire Dire Transcript, at page 56, line 13 to page 57, line 14 [AR Tab 3].

86. Trial Judge concluded that:

> It went no further than necessary and the moment the unsheathed knife was found, the accused was lawfully arrested for a breach of s. 88 of the *Criminal Code*. Of course, the Crown is now put to the proof of the essential ingredients of this offence beyond a reasonable doubt. The threshold for arrest is much lower.[26]

87. Based presumably on his conclusion that:

> While the determination in law of whether a knife found in these circumstances amounts to a "weapon dangerous to the public peace", it certainly may be classified as such.[27]

88. Section 495(1) of the *Criminal Code of Canada* provides for arrest without a warrant by a peace officer.

89. Section 88(1) of the *Criminal Code of Canada* provides a prohibition against a possessing a weapon for a dangerous purpose

90. In *R. v. Storrey* the Supreme Court of Canada interpreted what is now paragraph 495(1)(a) and held that the reasonable grounds for arresting a person without a warrant encompass both:

(a) a subjective belief on the part of the police that the person has committed or is about to commit an indictable offence, and

(b) that the subjective belief must be "justifiable from an objective point of view."[28]

91. An arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must also be justifiable from an objective point of view. This means that a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest.

92. The Appellant acknowledges that the police need not demonstrate anything more than reasonable and probable grounds and they are not required to establish a case for conviction

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[26] Trial Decision, at para. 25 [AR Tab 1A].
[27] Trial Decision, at para. 19 [AR Tab 1A].
[28] *R. v. Storrey*, [1990] 1 S.C.R. 241 (S.C.C.) at para. 17 [ABA Tab 11].

before making an arrest. The Appellant accepts that the officer purported to have a subjective basis for arresting him but states that it cannot be objectively justified.[29]

93. Cst. Blackmore states that he felt that he had grounds for arresting the Appellant based on the presence of the knife in the door.

94. The mere presence of an old hunting knife in the storage compartment of a vehicle does not, in and of itself constitute an offence and should not form reasonable and probable grounds for arrest.

95. The knife was clearly a knife designed for use in hunting, was corroded and appeared historic. It was not a knife that by design was either prohibited for use or designed for non-legitimate purposes like a switchblade or butterfly knife. It was also stored in an area of the vehicle specifically designed for storage.

96. Trial Judge found that "The officer immediately arrested the Applicant on the basis of possession of a weapon dangerous to the public peace in that time and at that place in the totality of the circumstances."[30]

97. The officer explained that his decision to arrest the Appellant was based on the mere presence of the knife and he did not reference any other evidence or grounds for determining that he had reasonable grounds to arrest the Appellant.

98. Judge Hylsop was correct; the court may consider the totality of the circumstances in determining whether the officer had reasonable and probable grounds to make the arrest[31]. The officer was however, unable to provide any explanation as to why he felt that the accused possessed a weapon for dangerous purpose other than it was within reach.

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[29] *Storrey, supra* [ABA Tab 11] and *R. v. Feeney, supra* [ABA Tab 5].
[30] Trial Decision, at para. 5 [AR Tab 1A].
[31] Trial Decision, at para. 5 [AR Tab 1A].

99. The Appellant submits that the arrest therefore constituted a breach of his s. 9 rights and the Court of Appeal erred in ruling that the arrest was lawful.

> The only question is whether a reasonable person could conclude that there were reasonable and probable grounds to believe that the appellant had possession of the knife for a purpose dangerous to the public peace.
>
> The judge found reasonable and probable grounds not in the mere presence of a knife but in "the totality of the circumstances":
>
> (i) The knife was located on the driver's side, where it would be most easily accessible;
>
> (ii) It was unsheathed. If the knife was related to illegal drug activity, it would be advantageous to have it unsheathed for quicker access;
>
> (iii) Involvement in the drug trade can be a motive to carry a weapon for a purpose dangerous to the public;
>
> (iv) The officer knew the appellant had previously been arrested for possession of drugs;
>
> (v) The appellant was carrying a machete type knife when he was last arrested for possession of drugs;
>
> (vi) The appellant's vehicle was carrying a police scanner. That is a known drug-trafficking accessory; and
>
> (vii) The appellant was carrying a police scanner the last time he was arrested for possession of drugs.
>
> I agree that the judge's reasons, taken together, support his conclusion that the arrest was lawful, satisfying the objective prong of the *Storrey* test. The trial judge did not err in concluding that the officer had reasonable and probable grounds for arresting the appellant.[32]

100. Justice White found that:

> An arrest requires reasonable and probable grounds to believe that an offence has been, will soon be, or is being committed. "Reasonable and probable grounds" is a standard of belief higher than mere suspicion, but occasionally described as lower than the civil standard of proof (balance of probabilities). A *prima facie* case is not required. Moreover, it is not enough for the officer to believe subjectively that he or she has reasonable and probable grounds — the belief must be objectively reasonable in the circumstances. The test is whether a reasonable

[32] Court of Appeal Decision, at paras. 24-26 [AR Tab 1B].

person in the position of the officer would believe they have grounds for the arrest. (*R. v. Storrey* [1990 CarswellOnt 78 (S.C.C.)] at 250-51).

While the reasonable and probable grounds standard is relatively low, it must nonetheless be applied with some precision. Circumstances should indicate that a particular offence or at least a type of offence has been, will soon be, or is being committed. It is not enough that there are factors that may indicate some kind of general criminal behavior.

My colleague references a number of loosely connected facts each of which is perhaps individually suspicious and somewhat indicative of the appellant being on occasion involved in unsavoury activities. However, the question on this appeal is whether, taken together, all of these facts could have reasonably and probably indicated to the officer that the appellant had committed, was about to commit or was committing the offence of possessing a weapon for purposes dangerous to the public peace or for committing an offence contrary to section 88(1) of the *Criminal Code*. In my view they do not. Simply put, the officer's mere general knowledge that the appellant had been previously arrested for drug offences and during that arrest was in possession of a knife, does not give the officer reasonable and probable grounds to arrest the appellant for possessing a weapon for a purpose dangerous to the public peace on any subsequent occasion when the officer sees the appellant with a knife. Otherwise a person in the position of the appellant would always thereafter be at risk of arrest if he ever carried a knife again, even though possessing such a knife is not *per* se unlawful. This is especially so when there is no evidence the knife was used to commit any offence or used for dangerous purposes on either occasion.

A knife is not a prohibited or restricted weapon such as a gun. Unlike a gun, a knife is inherently a tool, not a weapon. The fact of possessing a knife is not, without more, a criminal offence. While knives may be considered weapons within the meaning of section 2 of the *Criminal Code* with possession in some circumstances regulated by section 88(1), there is not a scintilla of evidence in this case that the appellant had previously used the knife dangerously, that he was attempting to use the knife dangerously, that he was committing any offence with the knife or that he had any purpose dangerous to the public peace. Even though it was nighttime, the appellant was driving alone in his vehicle, without exposing any other persons to the knife and he cooperated fully with the officer. I cannot conclude that a reasonable person would say that the officer had anything close to reasonable and probable grounds for arresting the appellant for possession of this knife. I note that similar circumstances were insufficient to justify an investigative detention in *Christie*.

In my view, the circumstances here are insufficient to justify an arrest.[33]

[33] Court of Appeal Decision, at paras. 44-48 [AR Tab 1B].

Exclusion of the evidence pursuant to s.24(2) of the *Charter*

101. As the Majority did not find there to be a breach of the Appellant's *Charter* Rights there was no s.24(2) analysis undertaken by the Majority. If this Honourable Court does find that the Court of Appeal erred in this finding the Appellant requests that it also find that the evidence should be excluded pursuant to s. 24(2) of the *Charter*.

102. There are two separate pieces of real evidence; the knife seized from the vehicle and the cocaine discovered as a result of search incident to arrest. The Appellant is arguing that the seizure of the knife was in breach of his right to be free from unlawful search. The cocaine was found as a result of a search that occurred after an unlawful arrest.

103. The test for deciding whether or not evidence obtained as a result of a violation of a right under the Charter should be excluded is set out in *R. v. Grant*[34], and is a three part test. The court states:

> When faced with an application for exclusion under s.24(2), a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to:
>
> 1. the seriousness of the Charter infringing state conduct (admission may send the message the justice system condones serious state misconduct),
> 2. the impact of the breach on the Charter protected interests of the accused (admission may send the message that individual rights count for little) and
> 3. society's interest in the adjudication of the case on its merits.[35]

104. The role of the court is to balance the assessments under each of these lines of inquiry to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute.

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[34] *R. v. Grant*, 2009 CarswellOnt 4104, 2009 SCC 32 [ABA Tab 6].
[35] *R. v. Grant*, *supra*, at para. 71 [ABA Tab 6].

Application of Grant Factors to this case

105. The conduct of Cst. Blackmore in stopping, searching and ultimately arresting the Appellant represented a gradual deterioration in state conduct; starting with a valid traffic stop and ending with an unlawful arrest.

106. The Appellant concedes that while he questions the veracity of the officer's claim that he was stopping the Appellant purely for a traffic violation, the fact that he was speeding did provide a justification for the stop pursuant to the *Highway Traffic Act*. Notwithstanding this the appellant maintains that the information Cst. Blackmore received from Cst McLean was the real reason the officer choose to stop his vehicle.

107. Cst. Blackmore proceeding to move beyond what was permissible as part of a traffic stop when he choose to search the Appellant's vehicle. The Trial Judge and Court of Appeal downplayed the manner in which Cst. Blackmore approached inspecting the vehicle but the Appellant maintains that the officer did enter his vehicle and did search his vehicle without a warrant. He went beyond what was required to satisfy the requirements of the *Highway Traffic Act*, to ensure officer safety or to determine if the Appellant was impaired.

108. The most serious conduct came when the Officer choose to place the Appellant under arrest and placed him in hand restraints. The Appellant argues that this arrest was unlawful and represented an extreme breach of his *Charter* rights.

109. It is agreed that a person has a diminished expectation of privacy in a vehicle and relatively no expectation of privacy in an object in plain sight. There is however still a reasonable expectation of privacy in a person's vehicle and the Appellant maintains that the knife was not in plain sight. Therefore the intrusion and search of the officer was a serious infringement of the Appellant's privacy rights. In addition, people have a right not to be subject to arbitrary and unlawful arrest and the arrest of the Appellant, without reasonable and probably cause, represented a very serious breach of the Appellants rights. Permitting such blatant disregard for the Appellant's right to privacy, and right not to be unreasonably searched and arrested undermines the fundamental rights that the *Charter* aims to protect.

110. Society clearly would have an interest in the matter being adjudicated on its merits. It cannot be disputed that a charge of trafficking in cocaine is serious. It is, of course, in society's interest to eliminate such an offence from occurring. This cannot however run roughshod over or come at the expense of the interests and rights afforded each person in Canada via the *Canadian Charter of Rights and Freedoms*.

111. If the evidence is reliable and points to guilt of the accused, the section 24(2) analysis favors the admission of the evidence as to do so would promote the public's interest in having the case adjudicated on its merits. The evidence gathered in this case is reliable in that it is physical evidence. However, as in *Grant*, this is not determinative of the issue.

112. While it is acknowledged the evidence is reliable, the manner in which the evidence was found is so concerning that the breach of the *Charter* rights in this particular circumstance, especially when viewed cumulatively, should outweigh society's interest in adjudicating the case.

113. We submit society's interest would be more focused on a police officer using a traffic stop as a means of searching a vehicle, without justification and then using what he found as grounds for arresting him unlawfully.

114. As this Honourable Court notes in *R. v. Harrison*, "the public also has a vital interest in a justice system that is beyond reproach, particularly where the penal stakes for the accused are high."[36] Additionally, the charge of trafficking in cocaine is not so serious as to overrun the public's interest in the justice system's integrity.

115. The evidence is also essential to the Crown's case. The Crown, without the knife and the drugs, has no evidence. While this would mitigate towards inclusion of the evidence it must be balanced against the seriousness of the breach.

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[36] *R. v. Harrison*, 2009 SCC 34 (SCC), at para. 34 [ABA Tab 7].

116. In summary, the facts in this case weigh in favour of exclusion of the evidence. The police conduct in this case demonstrates a "pattern of disregard" for the rights of the applicant[37]. As well, the "price paid by society" in the case of an acquittal on the drug charge is "outweighed by the importance of maintaining *Charter* standards"[38]. The Applicant submits that, on balance, the *Grant* factors favour exclusion of evidence obtained in violation of the *Charter* in this case, namely the knife and the drugs.

117. This was the ultimate decision of Justice White:

> When assessing the seriousness of the *Charter* breach, the availability of other investigative alternatives, the good faith of police officers, and the extent of the privacy expectation are all relevant factors. In this case, one might suspect that the search and arrest were a ruse enacted by police to search for drugs. As this was not developed in a meaningful way it must be assumed that the initial motives of the officer were innocent, as found by the trial judge. However, the situation quickly escalated into a barely permissible search and then a groundless arrest, followed by an unlawful invasive search incident to arrest. The officer did not make any effort to investigate whether or not he had grounds for the arrest (for example, he did not ask the appellant any questions about what he was doing or his purpose in having the knife). As in *Christie*, he had many options other than immediate arrest. The officer's good faith can be questioned since he could not articulate his grounds for arresting the appellant beyond stating that the latter had a knife. The requirement of reasonable and probable grounds for an arrest is not novel or ambiguous and the officer could not have been unaware of it.
>
> The impact of the arrest and subsequent search on the appellant were serious. He was hand-cuffed and placed in the police vehicle. He was searched, then strip-searched and detained overnight before he could be brought before the Court. These are significant and highly intrusive interferences with his privacy and liberty.
>
> It is in the interests of society to seek out and prosecute those who possess illegal drugs. The third factor favours admission in this case.
>
> Although he informed the appellant of his right to counsel, the officer did not testify that he had any serious reflection upon the legality of the searches and arrest, despite the fact that the appellant was compliant throughout with all requests. I agree with the New Brunswick Court of Appeal in *Christie* at paragraph 59 that, as in that case, the officer's actions were "overkill".

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[37] *R. v. Feeney, supra*, at para. 81 [ABA Tab 5].
[38] *R. v. Harrison, supra*, at para. 42 [ABA Tab 7].

> In these circumstances it would bring the administration of justice into disrepute to admit the evidence (see *R. c. Côté*, 2011 SCC 46, [2011] 3 S.C.R. 215 (S.C.C.)).
>
> In *Coté* the Supreme Court has affirmed that evidence, independently discovered or not, may be excluded under section 24(2) of the *Charter*. Here, the knife was discovered pursuant to the search that engaged section 8 but was authorized for reasons of officer safety. The concept of officer safety permits conduct of a minimally invasive search for weapons, not for evidence. Here, the knife was seized *as evidence of an offence incident to the arrest*, which arrest was not justified under section 9. As such, this evidence was causally connected to the *Charter* breach.[39]

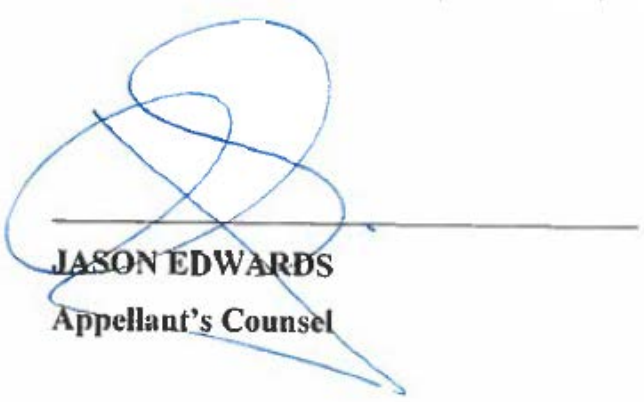
PART IV – SUBMISSION ON COSTS

118. Costs have not been requested.

PART V – ORDER SOUGHT

119. The Appellant seeks an Order allowing the appeal and exclusion of the knife and drugs seized, a quashing of the convictions and entering an acquittal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of April, 2016.



[39] Court of Appeal decision, at paras. 54-57 [AR Tab 1B].

PART VI – TABLE OF AUTHORITIES

TAB NO **PARAGRAPH**

Cases

Statute

PART VII – STATUTORY PROVISIONS

Canadian Charter of Rights and Freedoms, ss. 8, 9, 24(2)

Criminal Code R.S.C., 1985, c. C-46, ss. 88, 495(1), 691(1)(a)

***Canadian Charter of Rights and Freedoms*, ss. 8, 9, 24(2)**

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

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

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

8. Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.

9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

(2) Lorsque, dans une instance visée au paragraphe (1), le tribunal a conclu que des éléments de preuve ont été obtenus dans des conditions qui portent atteinte aux droits ou libertés garantis par la présente charte, ces éléments de preuve sont écartés s'il est établi, eu égard aux circonstances, que leur utilisation est susceptible de déconsidérer l'administration de la justice.

***Criminal Code* R.S.C., 1985, c. C-46, ss. 88, 495(1), 691(1)(a)**

88 (1) Every person commits an offence who carries or possesses a weapon, an imitation of a weapon, a prohibited device or any ammunition or prohibited ammunition for a purpose dangerous to the public peace or for the purpose of committing an offence.

(2) Every person who commits an offence under subsection (1)

> **(a)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
>
> **(b)** is guilty of an offence punishable on summary conviction

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; or
>
> **(c)** a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

691 (1) A person who is convicted of an indictable offence and whose conviction is affirmed by the court of appeal may appeal to the Supreme Court of Canada

> **(a)** on any question of law on which a judge of the court of appeal dissents; or

88 (1) Commet une infraction quiconque porte ou a en sa possession une arme, une imitation d'arme, un dispositif prohibé, des munitions ou des munitions prohibées dans un dessein dangereux pour la paix publique ou en vue de commettre une infraction.

(2) Quiconque commet l'infraction prévue au paragraphe (1) est coupable :

> **a)** soit d'un acte criminel passible d'un emprisonnement maximal de dix ans;
>
> **b)** soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

495 (1) Un agent de la paix peut arrêter sans mandat :

> **a)** une personne qui a commis un acte criminel ou qui, d'après ce qu'il croit pour des motifs raisonnables, a commis ou est sur le point de commettre un acte criminel;
>
> **b)** une personne qu'il trouve en train de commettre une infraction criminelle;
>
> **c)** une personne contre laquelle, d'après ce qu'il croit pour des motifs raisonnables, un mandat d'arrestation ou un mandat de dépôt, rédigé selon une formule relative aux mandats et reproduite à la partie XXVIII, est exécutoire dans les limites de la juridiction territoriale dans laquelle est trouvée cette personne.

691 (1) La personne déclarée coupable d'un acte criminel et dont la condamnation est confirmée par la cour d'appel peut interjeter appel à la Cour suprême du Canada :

> **a)** sur toute question de droit au sujet de laquelle un juge de la cour d'appel est dissident;