File Number: 36816

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

BETWEEN:

SCOTT DIAMOND

Appellant
(Appellant)

- and -

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

Respondents
(Respondents)

FACTUM OF THE RESPONDENT, HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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

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PART I - OVERVIEW AND STATEMENT OF FACTS

OVERVIEW

1. The appellant raises two central issues. The first is whether a flashlight-aided visual observation of the appellant's vehicle violated any s. 8 *Charter* protected privacy interest. The second is whether there were sufficient grounds for the appellant's arrest.

2. The Court of Appeal unanimously held that the visual survey of the appellant's vehicle during a lawful traffic stop did not violate s. 8 of the *Charter*. It was not a question on which a judge of the Court of Appeal dissented as contemplated under s. 691(1)(*a*) of the *Criminal Code*. Absent leave, the first issue is, therefore, not properly before this Court for want of jurisdiction.

3. In any event, there is no basis for interfering with the Court of Appeal's unanimous finding. This Court (and others[1]) have previously found that a flashlight-aided visual inspection of the interior of a motor vehicle during a lawful traffic stop does not violate s. 8 of the *Charter*. Such visual surveys are an expected and reasonable part of operating a motor vehicle on a public highway – a highly regulated activity. The visual inspection in this case involved what the trial judge described as "an absolutely minimal intrusion through the open window by flashlight"[2]. It did not alter the nature and extent of the permissible inspection in any material way or otherwise convert it into a violation of a *Charter* protected privacy interest.

4. Pursuant to his visual observation, Cst. Blackmore quickly discovered a large unsheathed knife within the immediate reach of the appellant and arrested him for possessing a weapon for a purpose dangerous to the public peace (s. 88(1) *Criminal Code*). The "totality of the circumstances" fully justified the arresting officer's belief that he had the requisite reasonable grounds for the appellant's arrest. Both the trial judge and the majority of the Court of Appeal

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[1] *R. v. Mellenthin*, [1992] 3 S.C.R. 615 at pp. 623-624; *R. v. Grunwald*, 2010 BCCA 288 at paras. 29-55 (leave to appeal refused [2010] S.C.C.A. No.299); *R. v. Lotozky* (2006), 81 O.R. (3d) 335 (C.A.) at paras. 13-19; *R. v. Ceballos*, 2014 ONSC 2281 at paras. 73-78; *R. v. Mohamed*, 2008 CarswellOnt 4868, [2008] O.J. No. 3145 (Sup. Ct.) at paras 94-108

[2] *R. v. Diamond*, 2014 CarswellNFLD 195 (Trial Decision) at para. 18, Record of the Appellant at Tab 1A

agreed that he did.[3] The appellant has failed to identify any error that would justify interference with the respective findings of the Courts below.

5. Nonetheless, should this Court find that either the visual inspection or the ensuing arrest violated the appellant's *Charter* rights, the proper application of s. 24(2) pursuant to *Grant*[4] does not justify the exclusion of the inherently reliable real evidence seized (the knife and 29 baggies of cocaine). Again, the Court of Appeal unanimously held that the visual inspection did not violate the appellant's s.8 *Charter* rights. Both the trial judge and the majority of the Court of Appeal agreed that the officer had the requisite reasonable grounds for the appellant's arrest. This serves to illustrate the marginal nature of any related *Charter* breach. If the permissible scope of the inspection was exceeded or the grounds for arrest were deficient, it was only by the slightest of margins. In the circumstances, the exclusion of the highly reliable evidence of serious crimes would be disproportionate to the seriousness of the related *Charter* breach.

FACTS

6. The appellant was charged with possessing a weapon (knife) for a purpose dangerous to the public peace contrary to s. 88(1) of the *Criminal Code* and possession of cocaine for the purpose of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act*. At trial, the appellant brought an application to exclude evidence seized incidental to a visual inspection of the appellant's vehicle and his ensuing arrest. For purposes of this appeal, the trial judge's findings of fact can be summarized as follows[5].

7. On September 27, 2012, RCMP Cst. Blackmore observed the appellant's vehicle accelerate to a speed of 80 km per hour in a 50 km per hour zone. He proceeded to lawfully stop the appellant's vehicle for the related *Highway Traffic Act* violation. The stop took place at approximately 12:55 a.m. in a rural area. Blackmore was alone at the time. Prior to stopping the appellant's vehicle, Blackmore was advised by a colleague to be cautious as the appellant had previously been arrested for drugs and had a police scanner and a knife in his possession.

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[3] *Ibid*, at para. 25-26; *R. v. Diamond*, 2015 NLCA 60 at paras. 24-26, Record of the Appellant at Tab 1B
[4] *R. v. Grant*, 2009 SCC 32 at para. 71
[5] *R. v. Diamond*, 2014 CarswellNFLD 195 at paras. 2-14, Record of the Appellant at Tab 1A; see also: *R v Diamond*, 2015 NLCA 60 at para.8, Record of the Appellant at Tab 1B

8. At the time of the stop, the Cst. Blackmore noticed a police scanner above the driver's side visor of the appellant's vehicle. He then advised the appellant that he was speeding and asked for his license and registration documents. When the appellant moved towards the glovebox of the vehicle to look for the documents, Blackmore noticed that he was sitting on a sum of money. During this time, Blackmore briefly inspected the interior of the appellant's vehicle using a flashlight. He immediately observed a large unsheathed hunting knife in the driver's side door pocket within the appellant's immediate reach. The trial judge accepted Cst. Blackmore's testimony that he was familiar with the type of vehicle involved and that he had no difficulty spotting the knife in plain view with the aid of his flashlight.

9. The trial judge found that "(a)ll 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 of the driver side of the truck."[6] The trial judge went on to conclude as follows:

> …The physical size and shape of the vehicle lent itself to a flashlight sweep of the interior that required *an absolutely minimal intrusion through the open window by flashlight.* Had the officer encountered a person determined to use force, his failure to do this sweep may have been fatal. To penalize the officer in these circumstances and characterize his actions as a breach of the *Charter* defies logic and common sense.[7] (emphasis added)

10. Cst. Blackmore then arrested the appellant for possession of a weapon dangerous to the public peace contrary to s. 88(1) of the *Criminal Code*. During an ensuing "pat down" search incidental to the arrest, a baggie of cocaine dropped to the ground. The appellant was advised of his rights to counsel, which he declined, and was advised of and understood the standard police caution. A subsequent search at the RCMP Detachment revealed 28 more baggies of cocaine.

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[6] *Ibid*, at para. 16
[7] *Ibid*, at para. 18

11. The unsheathed knife discovered during the visual inspection of the appellant's vehicle had a bone handle and an 8 inch blade. The 29 baggies seized incident to the appellant's arrest contained a total of 12 grams of cocaine, with a street value of $1,440.[8]

TRIAL JUDGE'S *VOIR DIRE* DECISION

12. The trial judge held that the visual inspection of the appellant's vehicle did not constitute a "search" for s. 8 purposes and that the ensuing arrest for the s. 88(1) *Criminal Code* weapons offence was lawful. The Court concluded that the appellant had "failed to establish that his *Charter* protected rights against unreasonable search and seizure were violated either in the truck during the visual inspection or in the subsequent search incidental to arrest when the baggie fell out of his clothing."[9]

13. Following the *voir dire* decision, the appellant conceded that there was sufficient evidence and invited the trial judge to enter convictions on the s. 88(1) *Criminal Code* and s. 5(2) *Controlled Drugs and Substances Act* offences.[10] Convictions were entered on both charges and the appellant was sentenced accordingly.

COURT OF APPEAL DECISION

14. The majority of the Court of Appeal dismissed the appellant's appeal from conviction. Applying this Court's decisions in *Tessling* and *Mellenthin*,[11] the majority found that the minimal intrusion necessitated by the height of the appellant's truck during the visual inspection of the vehicle did not constitute a "search" for s.8 *Charter* purposes. The majority also held that the "totality of the circumstances" supported the trial judge's finding that Cst. Blackmore had the requisite reasonable grounds to arrest the appellant for the s. 88(1) *Criminal Code* weapons offence.[12]

15. In dissent, White J.A. concurred with the majority finding that the flashlight inspection of the vehicle did not violate the appellant's s. 8 *Charter* rights. Applying *Mann* and *MacDonald*,[13]

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[8] *Voir dire* Transcript at pp. 18-22; 99, Record of the Appellant, Tab 3
[9] *R. v. Diamond*, 2014 CarswellNFLD 195 at paras. 25-26, Record of the Appellant at Tab 1A
[10] *Voir dire* Transcript at p. 95, Record of the Appellant, Tab 3
[11] *R. v. Tessling*, 2004 SCC 67; *Mellenthin*, *supra* note 1
[12] *R. v. Diamond*, 2015 NLCA 60 at paras. 15-18, 24-26, Record of the Appellant at Tab 1B
[13] *R. v. Mann*, 2004 SCC 52; *R. v. MacDonald*, 2014 SCC 3

he held that the inspection was a search justified for officer safety reasons. However, White J.A. went on to conclude that "taken together, all of the facts" could not provide reasonable grounds for the appellant's arrest. Having found the arrest and incidental search violated the appellant's s. 9 *Charter* rights, Justice White would have excluded the evidence seized.[14]

PART II - RESPONDENT'S POSITION ON QUESTIONS IN ISSUE

16. The appellant states the issues before the Court as follows:

a. 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?

b. 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?

c. Did the Court of Appeal err when it determined that the appellant's rights under the *Charter* were not infringed?[15]

17. The respondent's position is that the appeal should be dismissed for the following reasons:

a. The Court of Appeal unanimously held that the visual inspection of the appellant's vehicle did not violate s. 8 of the *Charter*. It was not an issue upon which a judge of the Court of Appeal dissented and is, therefore, not properly before the Court. In any event, both the trial judge and majority of the Court of Appeal correctly concluded that the inspection did not constitute a "search" for s. 8 *Charter* purposes as it did not violate any *Charter* protected privacy interest.

b. The majority of the Court of Appeal considered the "totality of the circumstances" and correctly upheld the trial judge's finding that Cst. Blackmore had reasonable grounds for the appellant's arrest.

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[14] *R. v. Diamond*, 2015 NLCA 60 at paras. 38-41, 46-49, 52-58, Record of the Appellant at Tab 1B

[15] The third issue as stated in the Appellant's Factum does not correspond with the third ground in the *AMENDED NOTICE OF APPEAL*, i.e. whether the pat-down search and strip search which revealed the presence of cocaine was lawful. The Appellant has conceded that if the arrest was lawful, so too would be the search incidental to his arrest.

c. The third issue as stated in the appellant's factum appears redundant since whether the appellant's *Charter* rights were infringed will be determined by the resolution of the first two issues relating to the lawfulness of the visual inspection and the ensuing arrest. The respondent's position is that both were lawful.

PART III – STATEMENT OF ARGUMENT

THE VISUAL INSPECTION OF THE VEHICLE WAS LAWFUL

Whether the Visual Inspection Violated s. 8 of the *Charter* is Not Before this Court

18. The Court of Appeal was unanimous in finding that the flashlight-aided visual inspection of the appellant's vehicle did not violate his s. 8 *Charter* rights. It is not an issue on which a judge of the Court of Appeal dissented as contemplated under s. 691(1)(a) of the *Criminal Code*. Following *Mellenthin*, the majority held the flashlight inspection did not constitute a "search" for s. 8 purposes. Applying *Mann* and *MacDonald*,[16] the dissenting judgment found that the inspection was a reasonable search justified for officer safety reasons. This Court denied the appellant's application for leave to appeal from the dissenting judgment on that point.[17] Absent leave, the issue is, therefore, not properly before this Court and should be dismissed for want of jurisdiction.

Section 8 *Charter* Analysis

19. In any event, were the issue properly before the Court, the respondent's position is twofold. First, the trial judge and majority of the Court of Appeal correctly decided that the flashlight-aided observation of the appellant's vehicle did not constitute a "search" for s. 8 purposes, since it did not intrude upon the appellant's reasonable expectation of privacy. Alternatively, even if the observation constituted a "search", it was authorized by law as a reasonable and necessary incident to the officer safely carrying out his statutory and common law duties in the circumstances and, therefore, did not violate s. 8 of the *Charter*.

20. Section 8 *Charter* analysis involves two distinct inquiries. The first is whether the relevant state action intruded upon a reasonable expectation of privacy. The burden rests with

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[16] *Mann*, *supr*a note 13, at paras. 36-45; *MacDonald*, *supr*a note 13, at paras. 31-45
[17] (April 21, 2016) S.C.C. file number 36816

the person attacking a search as "unreasonable" to establish an expectation of privacy in the place searched or items seized that is objectively reasonable. It is only when that burden has been met that a Court must proceed to the second stage of the inquiry, namely, whether the search was an unreasonable intrusion upon that reasonable expectation of privacy.[18] The respondent's position engages both stages of the s. 8 analysis.

What Constitutes a "Search" for s. 8 *Charter* Purposes?

21. Not every form of government examination constitutes a "search" for constitutional purposes. In *Evans,*[19] Binnie J. held that it is only where a state examination constitutes "an intrusion upon some reasonable privacy interest" that it constitutes a "search" for s. 8 purposes. Fish J. described privacy as "a matter of reasonable expectations" which "will attract *Charter* protection if reasonable and informed people in the position of the accused would expect privacy."[20] When defining the scope of s. 8 protected privacy interests, the comments of Major J. in his dissenting judgment in *Evans*[21] are instructive:

> … every investigatory method used by the police will in some measure constitute a "search". However, the scope of s. 8 is much narrower than that, and protects individuals only against police conduct which violates a reasonable expectation of privacy. To hold that every police inquiry or question constitutes a search under s. 8 would disregard entirely the public's interest in law enforcement in favour of an absolute but unrealistic right of privacy of all individuals against any state incursion however moderate. This is not the intent or the effect of s. 8…

22. The analysis does not lend itself to the creation of a judicial catalogue of permissible or impermissible state examinations. Whether a s. 8 *Charter* protected "reasonable expectation of privacy" exists is context specific. It depends on the "nature of the matter sought to be protected, the circumstances in which and the place where state intrusion occurs, and the purposes of the intrusion" and must be determined with reference to the "totality of the circumstances."[22] As

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[18] *R. v. Tessling*, *supr*a note 11, at paras. 19, 31-33; *R. v. Edwards*, [1996] 1 S.C.R. 128 at paras. 33, 45-46
[19] *R. v. Evans* [1996] 1 S.C.R. 8 at para. 11; see also: *Tessling*, *supr*a note 11, at para. 18
[20] *R. v. Cole*, 2012 SCC 53 at para. 35
[21] *Evans*, *supr*a note 19, at para. 41
[22] *R. v. Colarusso*, [1994] 1 S.C.R. 20 at p. 53; *R. v. A.M.*, 2008 SCC 19 at para. 156; *Tessling*, *supr*a note 11 at para. 19; *Edwards*, *supr*a note 18 at para. 45

noted in *Tessling*,[23] "privacy is a protean concept, and the difficult issue is where the "reasonableness" line should be drawn."

Visual Observation of the Interior of a Vehicle: No Reasonable Expectation of Privacy

23. A person engaging in the highly regulated licenced activity of operating a motor vehicle on a public road necessarily accepts that if his/her vehicle is lawfully stopped (as was the case here), the responsible officer may find it necessary to visually inspect the vehicle's interior. When the stop occurs at night, the use of a flashlight to assist is a necessary and expected incident to the inspection and has no appreciable intrusive effect. A reasonable motorist cannot realistically view this as a prohibited intrusion on his/her *Charter* protected privacy interests.

24. As emphasized in *R. v. Wise*, "almost every aspect of the use of a motor vehicle is controlled" and "reasonable surveillance and supervision of vehicles and their drivers is essential to the protection of society as a whole." Cory J. went on to state that a "reasonable level of surveillance of each and every motor vehicle is readily accepted, indeed demanded, by society to obtain this protection."[24] It is, therefore, not surprising that, as noted by the majority of the Court of Appeal, "there is a significant amount of jurisprudence affirming that a police officer may use a flashlight at night to observe activities or objects inside vehicles."[25]

25. In *Mellenthin*, the trial judge found that a s.8 "search" began when the officer shone his flashlight around the interior of Mellenthin's vehicle as part of a check stop program. In the Alberta Court of Appeal, McFayden J.A. expressed some doubt in that regard before finding that "such a visual search which is not intrusive in character, is justifiable for the safety of the police officer. He must be given the right to ensure that no weapons are immediately at hand which might pose a danger to him when he turns away from the vehicle."[26] Before this Court, in response to the Crown's argument that a visual inspection of the interior of a vehicle would not in itself constitute a "search", Cory J. stated:

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[23] *R. v. Tessling*, *supr*a note 11, at para. 25
[24] *R v. Wise*, [1992] 1 S.C.R. 527 at p. 534; see also: *R v. Belnavis*, [1997] 2 S.C.R. 341 at para. 39, *R v. Fedan*, 2016 BCCA 26 at paras. 65-66, *Grunwald*, *supr*a note 1, at para. 36
[25] *R. v. Diamond*, 2015 NLCA 60 at para. 16, Record of the Appellant at Tab 1B
[26] *R. v. Mellenthin*, 1991 ABCA 155 at para. 13

> There can be no quarrel with the visual inspection of the car by police officers. At night the inspection can only be carried out with the aid of a flashlight and it *is necessarily incidental to* a check stop program carried out after dark. The inspection is essential for the protection of those on duty in the check stops. There have been more than enough incidents of violence to police officers when vehicles have been stopped.[27](emphasis added)

26. Following *Mellenthin*, Courts have consistently held that a flashlight-aided visual inspection of a motor vehicle pursuant to a lawful traffic stop does not violate any s.8 protected privacy interests.[28] In *R. v. Lotozky*,[29] Rosenberg J.A. stated:

> [13] It seems that merely peering into a car window at night with the aid of a flashlight on a public highway is not a search. See *R. v. Mellenthin*, 1992 CanLII 50 (SCC), [1992] 3 S.C.R. 615, [1992] S.C.J. No. 100, 76 C.C.C. (3d) 481, at pp. 486-87 C.C.C. Admittedly, it is unclear whether the conduct in *Mellenthin* was not a search because there was no reasonable expectation of privacy or because the interference or intrusion was not sufficiently invasive.

27. Either way, such a visual inspection does not constitute a "search" as contemplated by s. 8 of the *Charter*.

The Applicable Test

28. Determining whether a reasonable expectation of privacy has been established, that is, whether the relevant state action constituted a "search" for s. 8 purposes, requires a multi-factored assessment tailored to the particular circumstances. While not intended as an exhaustive list, this Court has identified a series of factors that may be relevant to the inquiry in a particular case.[30]

29. For purposes of this case, the factors most relevant to the assessment would include the nature or subject matter of the evidence gathered (a knife); the place where the alleged search occurred (a motor vehicle lawfully stopped on a public highway); whether the informational content of the subject matter was in public view (the knife was immediately seen upon shining a flashlight into the interior of the appellant's vehicle); whether the police action was intrusive in

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[27] *Mellenthin*, *supr*a note 1, at pp. 623-624
[28] *Grunwald*, *supr*a note 1, at paras. 29-30, 36; *Ceballos*, *supr*a note 1, at paras. 73-74, 78; *Mohamed*, *supr*a note 1, at paras. 94-108
[29] *Lotozky*, *supr*a note 1, at paras. 13-19
[30] *Edwards*, *supr*a note 18 at para. 45; *Tessling*, *supr*a note 11, at para. 32; *R. v. Patrick*, 2009 SCC 17 at para. 27

relation to the privacy interest (an "absolutely minimal intrusion" through an open window made necessary by the particular height of the appellant's vehicle); whether the use of the information gathering technique was objectively reasonable (the visual survey was done for safety reasons after the officer had been warned to be cautious); and whether the informational content exposed any intimate details of the appellant's lifestyle or information of a biographic nature (no such information was revealed in this case). None of these factors are indicative of a "reasonable expectation of privacy" in this case, in fact, just the opposite.

Expectation of Privacy is Contextual

30. Of particular importance is the context and subject matter of the impugned visual observation of the appellant's vehicle. As mentioned, operating a motor vehicle on a public road is a highly regulated activity. The public's reasonable expectation is that police officers must be able to survey the interior of a vehicle in order to safely and effectively carry out their related duties. At night, using a flashlight to assist is an expected and necessary incident to such a survey.

31. That is not to say that the permissible scope of such a visual observation is without limits. Vehicles are not "*Charter*-free zones". Such inspections "must not be turned into a means of conducting either an unfounded general inquisition or an unreasonable search*"* or "a general search warrant for searching every vehicle, driver, and passenger that is pulled over."[31]

32. No such general inquisition or search took place in the present case. Rather, the visual observation of the appellant's vehicle was limited to what the trial judge characterized as "an absolutely minimal intrusion through the open window by flashlight."[32] As stated by the trial judge "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 of the driver side of the truck."[33]

33. Assessing the extent of s. 8 *Charter* protected privacy interests does not lend itself to categorical definition and cannot be reduced to the rigid application of concepts like "inside" or

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[31] *Mellenthin*, *supr*a note 1, at pp. 624, 629
[32] *R. v. Diamond*, 2014 CarswellNFLD 195, at para. 18, Record of the Appellant at Tab 1A
[33] *R. v. Diamond*, 2014 CarswellNFLD 195 at para. 16, Record of the Appellant at Tab 1A

"outside" as done by the dissenting judge in this case. Doing so without regard for the particular circumstances will inevitably lead to a failure to accurately assess the particular nature and extent of the impacted privacy interest. The dissenting judgment provides an example of such a failure. Cst. Blackmore did not in any meaningful way place himself into the interior of the appellant's vehicle as held in the dissenting judgment. With respect, an "absolutely minimal intrusion" through the open window of a vehicle to complete a brief visual inspection is not the same in principle as opening a door and sitting in the car seat as suggested by White J.A..

The authorities relied upon by the dissenting appellate judge can be distinguished

34. The authorities cited by White J.A. in support of his finding that the inspection constituted a "search" are not factually comparable to the present case. For example, in *R. v. Christie*[34], through the open window of a vehicle, the officer observed an open bottle of wine on the floor behind the driver's seat and a sheathed hunting knife in the pocket of the driver's door. He then handcuffed Christie, placed him in the rear of his police vehicle and proceeded to search Christie's vehicle, including the contents of a backpack located on the front passenger's seat. He found cocaine and marihuana in the backpack, two cellular phones in the vehicle's center console and additional marihuana under the driver's seat. The Court of Appeal unanimously found Christie's detention and the subsequent search of the vehicle to be serious violations of his ss. 8 and 9 *Charter* rights.

35. However, as noted by the trial judge, the circumstances in *Christie* stand in stark contrast to those in the present case:

> 20 I contrast this with the case of *R. c. Christie*, [2013] N.B.J. No. 428 (N.B. C.A.), where the police in New Brunswick arrested a man with a "sheathed" hunting knife properly stored and an open wine bottle which then triggered a full search of a closed duffle bag which gave rise to charges for possession of cocaine for the purposes of trafficking. In that case, the police clearly went far beyond the case at bar and their actions were strongly criticized by the New Brunswick Court of Appeal. The knife was a sheathed knife and the duffle bag which was found on the seat was searched without a warrant.[35]

36. The actions of Cst. Blackmore did not approach what was found permissible in *Belnavis*. Referencing *Mellenthin,* this Court found that in the context of a lawful traffic stop for a

[34] *R. v. Christie*, 2013 NBCA 64
[35] *R. v. Diamond*, 2014 CarswellNFLD 195 at para. 20, Record of the Appellant at Tab 1A

speeding violation, the officer had "every right to look in the vehicle's glovebox for documents pertaining to the ownership and registration of the vehicle and to open the back door and look into the rear of the vehicle for safety reasons and to speak with the passenger in the back seat.[36] These actions did not violate a s. 8 protected privacy interest.

37. Cst. Blackmore did nothing comparable to searching the vehicle's glovebox or opening a door and looking into the vehicle for safety reasons, though the reasoning in *Belnavis* would have entitled him to do so if circumstances required. Nor did Cst. Blackmore question the appellant, require him exit the vehicle and subsequently search its contents as was found impermissible in *Mellenthin*. There was no search of his person or handling of his personal effects. On the contrary, Cst. Blackmore merely looked in the open window of the appellant's vehicle.

Conclusion on expectation of privacy

38. As mentioned, courts have consistently found that a flashlight-aided inspection of the interior of a vehicle does not constitute a "search" for s. 8 purposes. The mere fact that in a particular set of circumstances, the responsible officer has to lean slightly into a vehicle's open window to effectively complete an inspection does not in any meaningful way alter the nature and extent of the inspection. It does not convert an otherwise lawful inspection into a breach of s. 8 protected privacy interests. What is being observed remains essentially the same. Such minor adjustments in the manner in which an otherwise lawful inspection is conducted should not be assigned any constitutional significance. Doing so would trivialize the privacy rights protected by the *Charter* and, at the same time, unnecessarily expose police officers to potentially dangerous situations without discernable benefit to the related individual privacy interests.

39. In the present case, both the trial judge and majority of the Court of Appeal struck the correct balance. The brief visual survey of the appellant's vehicle did not intrude upon a *Charter* protected reasonable expectation of privacy. It was not a "search" for s. 8 purposes.[37]

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[36] *Belnavis*, *supra* note 24, at para. 28
[37] *R. v. Diamond*, 2015 NLCA 60 at para. 18, Record of the Appellant at Tab 1B

If the Observation of the Vehicle constituted a "Search", it was Reasonable

40. Alternatively, should this Court find that the flashlight-aided observation of the appellant's vehicle constituted a "search", it was reasonable and therefore did not violate s. 8 of the *Charter*. The visual inspection was a necessary and reasonable incident to the officer safely carrying out his statutory and common law duties in the circumstances.

41. This Court has applied the ancillary powers doctrine established in *R. v. Waterfield*[38] in a variety of circumstances to determine the lawfulness of police conduct.[39] *Waterfield* established a simple two part test requiring a Court to consider, first, whether the conduct at issue is within the general scope of police duties imposed by statute or recognized at common-law and, second, whether the relevant conduct was reasonably necessary to fulfill the related duty.[40]

42. With respect to safety related searches, the first stage of the *Waterfield* analysis is easily satisfied. The common law police duty to protect life and safety is well established.[41] To safely and effectively fulfill this core responsibility, police must be authorized to take reasonable precautions to ensure "that risks are minimized to the greatest extent possible."[42]

43. Cst. Blackmore had lawfully stopped the appellant's vehicle for speeding. He was required by duty to take reasonable steps to ensure his safety and that of the appellant. To that end, the officer leaned slightly into the open window of the appellant's vehicle, shone his flashlight around, and immediately saw the large unsheathed hunting knife within the appellant's immediate reach. It is apparent from the record and the trial judge's findings that Blackmore conducted this visual inspection for safety reasons and no other purpose. In the case at bar, the first requirement of the *Waterfield* test is clearly met.

44. The second stage of the *Waterfield* analysis requires a contextual analysis of whether the particular police action constituted a justifiable exercise of powers associated with the related duty. As stated in *MacDonald*,[43] "To be justified, the police action must be *reasonably*

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[38] *R. v. Waterfield*, [1964] 1 Q.B. 164, [1963] 3 All E.R. 659 (C.C.A.)
[39] *R. v. Dedman*, [1985] 2 S.C.R. 2; *R. v. Godoy*, [1999] 1 S.C.R. 311; *R. v. Aucoin*, 2012 SCC 66; *Mellenthin*, *supra* note 1; *Mann*, *supra* note 13; and *MacDonald*, *supra* note 13
[40] *Godoy*, *supra* note 40, at para. 12; see also: *MacDonald*, *supra* note 13, at paras. 35-42
[41] *MacDonald*, *supra* note 13, at para. 35, 43
[42] *Mann*, *supra* note 13, at para. 43
[43] *MacDonald*, *supra* note 13, at para. 36

necessary for the carrying out of the particular duty in light of all the circumstances." Justice LeBel identified several factors to be considered for purposes of this assessment, namely, the importance of the performance of the duty to the public good; the necessity of the interference with individual liberty for the performance of the duty; and the extent of the interference with individual liberty.[44] In that regard, Justice LeBel concluded:

> If these three factors, weighed together, lead to the conclusion that the police action was reasonably necessary, then the action in question will not constitute an "unjustifiable use" of police powers (*Dedman*, at p. 36).

45. The relevant considerations identified by LeBel J. weigh heavily in support of a conclusion that the police action in this case was *reasonably necessary*.

46. First, with respect to the importance of the performance of the duty to the public good, as pointed out in *MacDonald*, "No one can reasonably dispute that the duty to protect life and safety is of the utmost importance to the public good and that, in some circumstances, some interference with individual liberty is necessary to carry out that duty."[45]

47. Second, as to the necessity of the related interference with individual liberty or, as here, a privacy interest, the pressing need to ensure officer safety in circumstances such as lawful traffic stops has been repeatedly recognized by this Court.[46] In *Mellenthin*, and more recently in *Mann*,[47] this Court emphasized that "police officers face any number of risks every day in the carrying out of their policing function, and are entitled to go about their work secure in the knowledge that risks are minimized to the greatest extent possible." In *Cornell*,[48] Justice Cromwell wrote that "Section 8 of the *Charter* does not require the police to put their lives or safety on the line if there is even a low risk of weapons being present…" Also, in *Crocker*,[49] the Court noted that "the potentially dangerous or even lethal risk to police officers in approaching a stationary, occupied vehicle, even when that risk is not readily observable, is well established."

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[44] *MacDonald*, *supra* note 13 at para. 37. See also: *Godoy*, *supra* note 40, at para 18
[45] *MacDonald*, *supra* note 13, at para. 39
[46] *Mann*, *supra* note 13, at para. 43; *Mellenthin*, *supra* note 1, at pp. 623-624; *Cornell*, 2010 SCC 31 at para. 20
[47] *Mann*, *supra* note 13, at para. 43
[48] *Cornell*, *supra* note 46, at para. 20
[49] *R. v. Crocker*, 2009 BCCA 388 at para. 63 See also: *R. v. Golub*, 1997 CarswellOnt 2448, 117 C.C.C. (3d) 193 (Ont. C.A.) at para. 45; *R. v. Willis*, 2003 MBCA 54 at para. 36

48. Cst. Blackmore was conducting a lawful traffic stop on a rural road late at night. He was alone. He was dealing with a driver who had been speeding and had been forewarned to be cautious as the appellant had been previously arrested for drugs, at which time, he had a police scanner and machete knife in his possession. Upon stopping the appellant's vehicle, he observed a police scanner and a quantity of cash on the driver's seat. The trial judge found that the officer was operating in "caution mode" and his visual inspection of the vehicle was done for safety reasons. Applying *Mann* and *MacDonald*, White J.A., in dissent, upheld the trial judge's finding and held that the visual inspection was justified for officer safety reasons and did not constitute an "unreasonable search".[50]

49. In the particular circumstances, it was necessary for Cst. Blackmore to lean into the open window of the appellant's vehicle to the minimal extent that he did. A proper survey of the appellant's truck, specifically for any weapons within his immediate reach, was not possible otherwise. As stated by the trial judge:

> 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 window to allow a view of this large knife, unsheathed and available for ready use in the lower door compartment of the driver's side of the truck.[51]

50. The trial judge went on to correctly conclude that had Cst. Blackmore not taken a reasonably thorough view of the vehicle "at that time and place, he would have been negligent."[52]

51. Finally, when assessing the extent of the interference with the appellant's privacy interests, the degree of the privacy interest involved is relevant. Where there is a diminished expectation of privacy, it "will influence the analysis of s. 8 and a consideration of what might constitute an unreasonable search and seizure".[53] As noted in *Tessling*,[54] territorial privacy involves a "nuanced hierarchy" of privacy interests with the home at the top (*R. v. Feeney*[55]) and

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[50] *R. v. Diamond*, 2015 NLCA 60 at paras. 40-41, Record of the Appellant at Tab 1B
[51] *R. v. Diamond*, 2014 CarswellNFLD 195 at para. 16, Record of the Appellant at Tab 1A
[52] *Ibid* at paras. 10-14
[53] *R. v. M.(M.R.)*, [1998] 3 S.C.R. 393 at para. 33
[54] *Tessling*, *supra* note 11, at para. 22
[55] *R. v. Feeney*, [1997] 2 S.C.R. 13 at para. 43

a motor vehicle near the bottom. If the visual inspection of the appellant's vehicle intruded upon an expectation of privacy, that expectation would be "markedly decreased"[56] or "greatly reduced".[57]

52. The impact on the appellant's privacy interests, if any, in this case was relatively benign. Cst. Blackmore simply shone his flashlight into the open window of the appellant's vehicle. The inspection was momentary and minimally intrusive. There was no physical search, no opening of containers, no questioning of the appellant and not prolonged detention.

53. By comparison, the brief visual survey in this case was significantly less intrusive than pushing open the front door of a dwelling place as occurred in *MacDonald* where LeBel J. wrote as follows:

> The infringement on individual liberty will be justified only to the extent that it is necessary to search for weapons. Although the specific manner (be it a pat-down, the shining of a flashlight or, as in this case, the further opening of a door) in which a safety search is conducted will vary from case to case, such a search will be lawful only if all aspects of the search serve a protective function. In other words, the authority for the search runs out at the point at which the search for weapons is finished. The premise of the *Collins* test — a warrantless search is presumed to be unreasonable unless it can be justified — must be borne in mind in determining whether the interference with individual liberty involved in a safety search is reasonable.[58]

54. In this case, the visual sweep required an "absolutely minimal intrusion" into the open window of the appellant's vehicle. The inspection stopped immediately upon locating the weapon and went no further than necessary to "serve a protective function." It is difficult to see what Cst. Blackmore should have done differently in the circumstances.

55. Applying the *Waterfield* analysis as articulated in *Mann* and *MacDonald* demonstrates that the visual inspection was a lawful incident of the officer's statutory and common law duties and was reasonably necessary to fulfill those duties. If the visual survey did constitute a "search", it was "reasonable" and therefore did not violate of s. 8 of the *Charter*.

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[56] *Wise*, *supra* note 24, at p. 534
[57] *Belnavis*, *supra* note 24, at para. 39
[58] *MacDonald*, *supra* note 13, at para. 39, third bullet

The Knife was in Plain View

56. The majority of the Court of Appeal upheld the trial judge's finding that the "plain view doctrine" applied to authorize the seizure of the knife observed during the visual inspection of the appellant's vehicle. Reliance on the plain view doctrine has three requirements: (1) the officer be lawfully in a position from which the evidence is plainly in view, (2) the discovery of the evidence must be inadvertent, and (3) it must be apparent to the officer that the observed item *may* be evidence of a crime.[59]

57. The trial judge found as a fact that the knife was seen immediately during the course of the visual inspection of the appellant's vehicle and that its discovery was inadvertent.[60] The Court of Appeal unanimously held that the officer's flashlight-aided inspection of the appellant's vehicle did not violate his s. 8 *Charter* rights. Whether the flashlight inspection was not a "search" for s. 8 purposes (as held by the majority) or was a reasonable "search" justified for officer safety reasons (as found by White J.A. in dissent), the plain view doctrine would apply equally to the seizure of the knife. Either way, the officer was "lawfully in a position from which the evidence was plainly in view."

58. For the reasons that follow, the respondent's position is that both the trial judge and the majority of the Court of Appeal were correct to conclude that the officer had the requisite reasonable grounds to arrest the appellant for a *Criminal Code* weapons offence relating to the knife and, by extension, both were correct to conclude that it was apparent the knife may be evidence of a crime and that the plain view doctrine justified its seizure in the present case.[61]

THE APPELLANT'S ARREST WAS LAWFUL

Requirements for a Lawful Arrest

59. For an arrest to be lawful, the arresting officer must subjectively have reasonable grounds for the arrest and those grounds must be objectively justifiable. That is, as stated by Cory J. in *R.*

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[59] *R. v. Chaisson*, 2005 NLCA 55 at para. 33. See also: *R. v. Robere (L.J.)*, 1999 CanLII 19033, 181 Nfld. & PEIR 292 (NLCA) at para. 19
[60] *R. v. Diamond*, 2014 CarswellNFLD 195 at paras. 10, 12, 16, Record of the Appellant at Tab 1A
[61] *R. v. Diamond*, 2015 NLCA 60 at para. 20-21, Record of the Appellant at Tab 1B

v. Storrey[62], "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."

The Reasonable Grounds Standard

60. In *Hunter v. Southam Inc.*,[63] the reasonable grounds standard was set "at the point where credibly-based probability replaces suspicion." As noted by Wilson J. in *Debot*,[64] "(t)he appropriate standard is one of "reasonable probability" rather than "proof beyond a reasonable doubt" or "*prima facie* case". The phrase "reasonable belief" also approximates the requisite standard."

61. In *Mugesera* [65], this Court stated that "(t)he "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on a balance of probabilities." Similarly, in *Jir*,[66] Frankel J.A. wrote "(a)s has been stated many times, the "reasonable grounds" standard is not only less than that required for conviction but is also less than the civil standard of proof."

62. Providing further guidance in *Sanchez*,[67] Justice Hill stated that the "appropriate standard of reasonable or credibly-based probability envisions a practical, non-technical and common-sense probability as to the existence of the facts and inferences asserted." As noted in *Day*,[68] "(i)t is important to restate that police need only reasonable grounds, not more."

63. Determining whether the reasonable grounds standard is met requires consideration of the "totality of the circumstances".[69] The cumulative effect of the facts must provide support for the officer's belief that the requisite reasonable grounds exist. Individually, each factor may not warrant arrest, but the sum of the factual elements can serve to establish lawful grounds for an arrest.[70]

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[62] *R. v. Storrey*, [1990] 1 S.C.R. 241 at pp. 250-251; see also *R. v. Warford*, 2001 NFCA 64 at para. 19
[63] *Hunter v. Southam Inc.*,[1984] 2 S.C.R. 145 at p. 167
[64] *R. v. Debot*, [1989] 2 S.C.R. 1140 at p. 1166
[65] *Mugesera v. Canada (Minister of Citizenship & Immigration)*, 2005 SCC 40 at para. 114
[66] *R. v. Jir*, 2010 BCCA 497 at para. 27
[67] *R. v. Sanchez* (1994), 93 C.C.C. (3d) 357 at p. 367
[68] *R. v. Day*, 2014 NLCA 14 at para. 39
[69] *Debot*, *supra* note 64, at p. 1168
[70] *R. v. Nolet*, 2010 SCC 24 at para. 48

Reasonable Grounds in the Arrest Context

64. The context in which the arrest power is exercised must be considered when assessing whether the reasonable grounds standard has been met. The assessment takes place from the vantage point of an officer who must make a decision in an often fluid, fast-changing environment. As Doherty J.A. stated in *R. v. Golub*:[71]

> The dynamics at play in an arrest situation are very different than those which operate on an application for a search warrant. Often, the officer's decision to arrest must be made quickly in volatile and rapidly changing situations. Judicial reflection is not a luxury the officer can afford. The officer must make his or her decision based on available information which is often less than exact or complete. The law does not expect the same kind of inquiry of a police officer deciding whether to make an arrest that it demands of a justice faced with an application for a search warrant.

65. As noted in *R. v. Shinkewski*,[72] "(t)he standard of "reasonable grounds to believe" does not require that an arresting officer ensure there has been "informed consideration" of all the information available at the time of arrest before the officer may lawfully effect an arrest. The standard simply requires the arresting officer to consider all incriminating and exonerating information *which the circumstances reasonably permit (R. v. Storrey)*."

66. These considerations are directly applicable when reviewing the sufficiency of Cst. Blackmore's grounds for arresting the appellant. He was alone in a rural area late at night and had been warned to exercise caution. His decision was made quickly in an evolving situation.

There Were Reasonable Grounds for Appellant's Arrest

67. The majority of the Court of Appeal correctly applied the above-noted principles in confirming the trial judge's finding that Cst. Blackmore had the requisite reasonable grounds for the appellant's arrest.[73] In doing so, the majority emphasized that the trial judge's finding was based "not in the mere presence of a knife, but in "the totality of the circumstances"." Harrington J.A. summarized those circumstances as follows:

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[71] *Golub*, *supra* note 50 at para.18; see also: *R. v. McCabe*, 2008 NLCA 62 at para. 23
[72] *R. v. Shinkewski*, 2012 SKCA 63 at para. 16
[73] *R. v. Diamond*, 2015 NLCA 60 at paras. 22-26, Record of the Appellant at Tab 1B

> (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.[74]

68. While confirming the trial judge's finding, the majority was careful to note that the presence of an unsheathed knife located in the door pocket beside the driver of a vehicle would not in every instance provide the lawful basis for an arrest for possession of a weapon dangerous to the public peace. Rather, the Harrington J.A. stated:

> [21] … It is the confluence of circumstances that supports the arrest for that offence in this case. The officer had been warned to proceed with caution since the owner of the vehicle had previously been charged with drug offences and, at the time, he had had a knife. The officer was alone on a rural road at 12:55 a.m. The officer saw that the appellant had been sitting on an amount of money which was visible when he leaned over to open the glove box. In the circumstances, he reasonably suspected the involvement of drugs which alerted him to the possibility that the knife was intended for a use dangerous to the public peace, including to himself.[75]

69. Considered as a whole, the circumstances provided a sound basis for a reasonable person in Cst. Blackmore's shoes to conclude that there were reasonable grounds for the appellant's arrest. The trial judge, who was in the best position to assess the relevant evidence, held that Cst. Blackmore had reasonable grounds for the appellant's arrest. The majority of the Court of Appeal readily agreed that the "totality of the circumstances" supported the arresting officer's belief that he had the requisite reasonable grounds. Both decisions applied the correct standard

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[74] *Ibid,* at para. 25
[75] *Ibid,* at para. 21

and were reasonable and supported by the evidence. The appellant has failed to identify any error justifying interference with the respective decisions of the Courts below.

EXCLUSION OF THE EVIDENCE

Section 24(2) Analytical Framework

70. Nonetheless, should this Court find that both the trial judge and majority of the Court of Appeal erred in finding no violation of the appellant's *Charter* rights, a proper application of s. 24(2) does not justify the exclusion of the reliable and essential evidence seized in this case.

71. In *Grant*,[76] this Court established a flexible multi-factored s. 24(2) analytical framework requiring consideration of "all the circumstances". This revised approach requires consideration of (1) the seriousness of the *Charter*-infringing state conduct, (2) the impact of the breach on the *Charter*-protected interests in the accused, and (3) the societal interest in having criminal matters adjudicated on their merits. Having done so, the judge must then determine whether, on balance, the admission of the evidence in issue would bring the administration of justice into disrepute. There is no single overarching rule governing how that balance is to be struck.

Seriousness of Charter-Infringing State Conduct

72. With respect to the visual inspection of the appellant's vehicle, Cst. Blackmore acted on an honest belief that he had the requisite authority to conduct the inspection in the context of a lawful traffic stop. As noted by the Court of Appeal, there is considerable jurisprudence to support that belief. Again, the Court of Appeal was unanimous in finding that the visual inspection did not violate the appellant's s. 8 *Charter* rights. In the circumstances, any mistake by Cst. Blackmore with respect to the extent of his authority was an understandable one. If the permissible scope of the inspection was exceeded, it was only by the slightest of margins. In addition, the inspection was done for safety reasons and the discovery of the knife was inadvertent. This further attenuates the seriousness of any *Charter* breach relating to the inspection.[77]

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[76] *Grant*, *supra* note 4, at paras. 70-71, 85-86
[77] *R. v. Aucoin*, 2012 SCC 66 at paras. 47-49

73. Similarly, with respect to the arrest, Cst. Blackmore acted on a good faith subjective belief that he had reasonable grounds for the appellant's arrest. Both the trial judge and majority of the Court of Appeal agreed that his belief was objectively justifiable. That serves to illustrate the marginal nature of any *Charter* breach relating to the appellant's arrest. If Cst. Blackmore's grounds were deficient, they fell just short of the standard required.

Impact on Appellant's *Charter*-Protected Interests

74. To determine the seriousness of an infringement, a Court must examine the interests engaged and the degree to which those interests were impacted[78]. Where privacy interests are at stake, the impact of the infringement must be considered with reference to the particular extent of the privacy interest involved.

75. With respect to the visual inspection, as previously mentioned, an individual has a markedly diminished expectation of privacy in relation to a motor vehicle operated on a public highway falling toward the bottom of the hierarchy of places in which an individual has a privacy interest. The impact of the inspection on the appellant's privacy interest (if any) was minimal.

76. As to the arrest, it was a relatively unintrusive pat-down search at roadside that resulted in the discovery of cocaine. The arrest and incidental search were conducted in a reasonable manner. The appellant was properly advised of his rights to counsel throughout the process. There is no evidence of disregard for the appellant's *Charter* rights. Any impact on the appellant's *Charter*-protected interests in the circumstances can be fairly placed at the lower end of the spectrum.

Society's Interest in Adjudication on the Merits

77. The question at this stage of the analysis is whether the truth-seeking function of the criminal trial would be better served by admission of the evidence or by its exclusion. The seriousness of the offence, the importance of the evidence to the Crown's case, and reliability of the evidence are central to this line of inquiry.

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[78] *Grant*, *supra* note 4, at para. 77

78. There is no question as to the seriousness of the offences charged. They involve the possession of a weapon dangerous to the public peace and a quantity of cocaine packaged for the purpose of trafficking. Society's pronounced interest in having such serious charges adjudicated on their merits is obvious. The evidence seized was inherently reliable real evidence essential to the Crown's case and its exclusion would effectively prevent the case from being tried on its merits.

Application of s. 24(2) Requires Admission of the Evidence

79. Any violation of the appellant's *Charter* rights was not the product of serious Charter-infringing state conduct. If either the visual inspection or the arrest violated the appellant's *Charter* rights, it was only by the slightest of margins. Cst. Blackmore acted on an honest belief that he had the lawful authority to do both. The trial judge and the majority of the Court of Appeal agreed that he did. Any impact on the appellant's *Charter*-protected interests was relatively low. In the present case, it would be the exclusion of the highly reliable and essential evidence of serious crimes that would bring the administration of justice into disrepute, rather than its admission.

PART IV - COSTS

80. The respondent does not seek costs and makes no representations in that regard.

PART V - ORDER SOUGHT

81. The respondent requests that the appeal be dismissed, without costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Halifax, in the Province of Nova Scotia, this 6th day of June, 2016.

Paul B. Adams
Counsel for the respondent
Her Majesty the Queen in Right of Canada

Robin Fowler
Counsel for the respondent
Her Majesty the Queen in Right of Canada

PART VI - TABLE OF AUTHORITIES

PART VII – STATUTORY PROVISIONS

Canadian Charter of Rights and Freedoms, ss. 8 and 9, Part I of the ***The Constitution Act***, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss 8, 9, 10*(b)*, 11*(b)*, 24(2)

Search or seizure 8. Everyone has the right to be secure against unreasonable search or seizure.	**Fouilles, perquisitions ou saisies** 8. Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.
Detention or imprisonment 9. Everyone has the right not to be arbitrarily detained or imprisoned.	**Détention ou emprisonnement** 9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.
Exclusion of evidence bringing administration of justice into disrepute 24 (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.	**Irrecevabilité d'éléments de preuve qui risqueraient de déconsidérer l'administration de la justice** 24 (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.

Controlled Drugs and Substances Act, SC 1996, c 19, s 5(2)

Possession for purpose of trafficking 5(2) No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III or IV.	**Possession en vue du trafic** 5(2) Il est interdit d'avoir en sa possession, en vue d'en faire le trafic, toute substance inscrite aux annexes I, II, III ou IV.

Criminal Code, RSC 1985, c C-46, ss. 88(1) and 691(1)(a)

Possession of weapon for dangerous purpose	**Port d'arme dans un dessein dangereux**
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.	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.