

Citation: *R. v. Driedger*, 2015 YKTC 39

Date: 20150930  
Docket: 14-00439  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Schmidt

REGINA

v.

ABRAM DRIEDGER

Appearances:  
Christiana Lavidas  
André Roothman

Counsel for the Crown  
Counsel for the Defence

**RULING ON *CHARTER VOIR DIRE***

[1] SCHMIDT T.C.J. (Oral): In this case, the conservation officers were acting in conjunction with the police in a roadblock. The RCMP were checking vehicles for various things that they are permitted to check by way of roadblock. Conservation officers are also permitted to stop vehicles and make checks, and so they were working together.

[2] In this particular case, Mr. Driedger was driving on the Alaska Highway in a place where this stop was being conducted. He came to the roadside stop and he did stop. The conservation officer went to his window and noticed that it was just Mr. Driedger in the vehicle. He asked him if he had any firearms, which he is permitted to ask in a

roadside stop, and Mr. Driedger answered that, yes, he did, he had firearms in the trailer that was being pulled by the truck that he was driving.

[3] The conservation officer noticed what he knows to be a gun case on the floor of the back seat as he was talking to Mr. Driedger. He told Mr. Driedger that he saw what appeared to be a firearms case in the back seat so, without any further questioning, he asked him to unlock the back door so he could open the door to verify whether there was a firearm in the case. Mr. Driedger unlocked the back door and remained sitting in the driver's seat. The officer opened the back door and took the gun case out of the vehicle, put it on the ledge or the back of the vehicle, opened the gun case and found a firearm, and then subsequently the police officer arrested Mr. Driedger because they believed offences had occurred. Mr. Driedger was later released at the roadside and went on his way.

[4] The section that we are dealing with, s. 136(1) of the Territorial *Wildlife Act*, RSY 2002, c. 229, allows the stopping of vehicles or boats by a conservation officer.

Subsection (2) says that:

The operator and any occupants of a vehicle or boat stopped under subsection (1) shall promptly produce for inspection any wildlife, firearm, licence, permit or other thing requested by the officer relating to this *Act*.

[5] This conservation officer did not, in fact, ask Mr. Driedger to produce anything. He bypassed that section and decided that he would search instead because he had reasonable grounds to believe there was a firearm in the vehicle. The *Act*, in this section, does not allow for searches. There is another section dealing with buildings

and other places and it is a much longer section with checks and balances. With respect to a vehicle, the *Act* does not allow for searches, it just allows for an officer to ask people, "Do you have a licence?" and they produce it. It doesn't allow the officer to go searching for a licence on a boat that he may stop, or search for a permit; the section says produce it. And so that is what the *Act* authorizes an officer to do. An officer is allowed to say, "Produce a firearm." I don't know what would happen if a person failed to produce a firearm, but we are not dealing with that situation here.

[6] I find that the way in which this officer got the firearm in his hands, by going into the back seat of the car, taking the gun case out and searching the gun case outside of the vehicle, is a breach of s. 8 of the *Charter*.

[7] The question then becomes: Should it be excluded pursuant to s. 24(2)? We have to refer back to what exactly happened here. First of all, I will read a section from *R. v. Dhillon*, 2012 BCCA 254, at para. 76 from the Court of Appeal of British Columbia:

In my view, the *Charter*-infringing conduct in this case was serious. Proceeding with a search in the admitted absence of reasonable grounds and without a valid consent (the requirements of which had been well established for at least 12 years) does not demonstrate good faith. Absent exceptional circumstances, deliberate, negligent or willfully blind state conduct does not equate with good faith...and the impugned conduct cannot be justified.

This is referring to the analysis that the Court must do under s. 24(2).

[8] Now I will refer back to the particular facts of this case. The officer, as I said, did not ask Mr. Driedger to produce a firearm. He could have said, "Please produce that thing," the "thing" being the case. He is authorized to ask someone to produce "things"

and could have said "I want to determine whether there is a firearm inside of it."  
Instead, for what he says are officer safety reasons, he told Mr. Driedger: "I want to inspect that case in the back to verify whether it is a firearm and I want you to unlock the door so I can do that." Mr. Driedger complied and unlocked the door. It could have gone down several different tracks, but the fact that Mr. Driedger did unlock the door is consent for the officer to do only what he said he wanted to do, and that is not search the vehicle, but look inside that case. The consent for that action of the officer was given by Mr. Driedger, and that therefore mitigates the seriousness of the breach to a considerable extent, and to the extent that, in my view, s. 24(2) should not be utilized to exclude the evidence.

[9] So while I find there is a breach, I find that the evidence will not be excluded under s. 24(2).

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SCHMIDT, T.C.J.