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# R. v Jackson, 2025 SKKB 86

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# KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 86**

Date: **2025 06 20**
File No.: CRM-ES-00013-2024
Judicial Centre: Estevan

2025 SKKB 86 (CanLII)

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BETWEEN:

STACEY JACKSON

APPELLANT

- and -

HIS MAJESTY THE KING

RESPONDENT

**Counsel:**

| | |
|---|---|
| Liam Fitz-Gerald | for the Crown |
| Stacey Jackson | self-represented appellant |

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DECISION
June 20, 2025

MORRIS J.

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## I. Introduction and Background

[1] Stacey Jackson was convicted on August 30, 2024, by the Honourable Judge Green in Estevan Provincial Court of the following offence:

> On or about the 10th day of December, A.D. 2023, at Estevan, in the Province of Saskatchewan, did have a blood drug concentration for the drug that is equal to or exceeds the blood drug concentration for the drug that is prescribed by regulation within two hours after ceasing to operate a conveyance, contrary to section 320.14(1)(c) of the *Criminal Code* [RSC 1985, c C-46].

[2] This offence is akin to the "over .08" offence for blood alcohol

concentration. In this case, the offence charged was based on Ms. Jackson's blood drug concentration for methamphetamine.

[3] At the outset of the trial, the Crown directed a stay of proceedings on an impaired driving charge arising from the same circumstances. Constable Golden of the Estevan Police Service gave evidence for the Crown. Ms. Jackson called two witnesses, but did not give evidence herself. Ms. Jackson alleged that her ss. 8 and 9 *Canadian Charter of Rights and Freedoms* [*Charter*] rights were breached by Cst. Golden and that the certificate of an analyst with respect to her blood drug concentration should be excluded from the evidence. More particularly, she alleged that she had been arbitrarily stopped and detained, and that the test of her oral fluid conducted via approved drug screening equipment [the SoToxa] was unreasonably and unjustifiably delayed. Judge Green rejected these arguments, and he concluded that the offence of exceeding the legal blood drug concentration was proven beyond a reasonable doubt. He sentenced Ms. Jackson to the minimum sentence, which included a fine and a driving prohibition, and he waived the victim fine surcharge.

[4] Ms. Jackson appeals both her conviction and sentence.

[5] Based on Ms. Jackson's written and oral submissions, the following are the arguments that she advances before this Court:

(a) The trial judge was the same judge that presided at the pre-trial case management conference, and was biased;

(b) Ms. Jackson did not receive the disclosure she ought to have received prior to trial;

(c) The trial judge erred in concluding that Cst. Golden did not breach Ms. Jackson's *Charter* rights when he stopped her vehicle;

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(d) The trial judge erred in concluding that the testing of Ms. Jackson's oral fluid via the SoToxa was conducted in accordance with s. 320.27(1)(c) of the *Criminal Code*, RSC 1985, c C-46;

(e) Ms. Jackson ought to have been advised of her right to counsel before the SoToxa test was administered;

(f) The trial judge erred in admitting the certificate of an analyst into evidence because the nurse who drew Ms. Jackson's blood did not form an opinion with respect to her impairment;

(g) The trial judge erred in not considering evidence of (lack of) impairment with respect to the offence under s. 320.14(1)(c) of the *Criminal Code*; and

(h) The trial judge erred in concluding that he was required to impose a one-year driving prohibition as part of Ms. Jackson's sentence.

## II. Jurisdiction and Standard of Review

[6] Ms. Jackson's appeal is brought pursuant to s. 813 of the *Criminal Code*, which states:

> **813** Except where otherwise provided by law,
>
> (a) the defendant in proceedings under this Part may appeal to the appeal court
>
> (i) from a conviction or order made against him,
>
> (ii) against a sentence passed on him, …

[7] The standard of review for such an appeal is described in *R v Helm*, 2011 SKQB 32, [2011] 6 WWR 641:

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> [19] On the factual grounds, the standard of review is whether there is evidence upon which a trier of fact, properly instructed, could reasonably reach the verdict. See *R. v. Bigsky*, 2006 SKCA 145, [2007] 4 W.W.R. 99 at para. 74; *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381; and *R. v. Yebes*, [1987] 2 S.C.R. 168. The appellate court ought not substitute its own view of the evidence for that of the trial judge. However, the appellate court is entitled to review, re-examine and re-weigh the evidence, but only for the purpose of determining if the evidence was reasonably capable of supporting the learned trial judge's conclusion. See *R. v. Burns*, [1994] 1 S.C.R. 656.
>
> [20] On a question of law, the standard is correctness, and the appellate court should intervene if the decision is not correct in law unless, in the case of defence appeals, there has been no substantial wrong or miscarriage of justice that has occurred. See *R. v. Shepherd*, 2007 SKCA 29, [2007] 4 W.W.R. 659; and *R. v. Henry (B.)*, 2006 SKQB 469, 286 Sask. R. 154.

[8] In *R v Kossick*, 2018 SKCA 55, 365 CCC (3d) 186, the Court of Appeal stated:

> [19] A judge's application of the *Charter* raises a question of law: *R v Ramos*, 2011 SKCA 63 at para 19, 371 Sask R 308. A judge's finding of fact is entitled to deference; however, the application of a legal standard to the facts to establish a *Charter* violation is subject to the correctness standard: *R v Shepherd*, 2009 SCC 35 at para 20, [2009] 2 SCR 527.

[9] With respect to the sentence appeal, except where a sentencing judge makes an error of law or an error in principle that has an impact on the sentence, an appellate court may not vary the sentence unless it is demonstrably unfit: *R v Lacasse*, 2015 SCC 64 at para 11, [2015] 3 SCR 1089.

## III. Analysis

### a) Allegation of bias with respect to the trial judge

[10] Appellants are not required to demonstrate actual bias in order to succeed in an appeal where a lack of impartiality is alleged. They are only required to establish

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the existence of a reasonable apprehension of bias in order to successfully raise this ground of appeal: *Jans Estate v Jans*, 2020 SKCA 61 at para 128, 59 ETR (4th) 53 [*Jans*]. However, this is not an easy task.

[11] In *R v T.F.*, 2019 SKCA 82, Kalmakoff J.A. described the presumption of integrity with respect to trial judges, and the burden of proof faced by a person asserting a reasonable apprehension of bias:

> [31] Trial judges benefit from a presumption of integrity, which in turn encompasses the notion of impartiality: *R v Teskey*, 2007 SCC 25 at para 19, [2007] 2 SCR 267. In order to have any legal impact, an apprehension of bias in respect of a trial judge must be reasonable, and the grounds must be serious and substantial. Real likelihood or probability of bias is necessary; a mere suspicion is not enough: *Aalbers v Aalbers*, 2013 SKCA 64, 417 Sask R 69.
>
> [32] The threshold for a successful allegation of perceived judicial bias is high. There is a strong presumption that judges will carry out their oath of office, and this presumption can only be displaced by cogent evidence that demonstrates the judge has done something which gives rise to a reasonable apprehension of bias: *R v S.(R.D.)*, [1997] 3 SCR 484 at para 117.

[12] An allegation of bias must be raised in a timely manner. Failing to raise the issue before the trial judge may result in the allegation being unsustainable in an appeal. In *Jans*, the Court stated:

> [130] There is an obligation on a party who is concerned about a reasonable apprehension of bias to object in a timely fashion. Objecting only after an unfavourable result is obtained creates difficulties for the party making such assertions: *R v E.E.D.*, 2007 SKCA 99 at para 16, 304 Sask R 192 [*E.E.D.*], and *R v Curraugh*, [1997] 1 SCR 537 at paras 11 and 113. An appellant faces a high hurdle, if not an outright prohibition, when it alleges a reasonable apprehension if the facts were known in advance or during the trial and the party failed to raise the issue at the time (*E.E.D.*):

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> [16] … it is significant that no objection was taken by defence counsel at the time, and no request was made to the trial judge to recuse himself following the impugned remarks. The words must be interpreted in the context in which they occurred and an apprehension of bias, to give grounds for appeal, must be reasonable. If the words gave rise to a reasonable apprehension of bias, one would have expected experienced counsel to ask the judge to withdraw from the case, at that point. … Moreover, a party who is aware of bias in a proceeding but does not object in a timely manner may not complain later when the decision goes against it. *R. v. Curragh Inc.*, [1997] 1 S.C.R. 537 (at para. 11).
>
> [Emphasis added]

[13] Ms. Jackson contends that because Judge Green was the judge at her case management conference and at her trial, he went into the trial with a biased opinion. In my view, there is no merit to this allegation. First, Ms. Jackson did not raise any concerns in this regard during her trial. Rather, she conveyed that she wanted to proceed with the trial immediately because her lack of a driver's license was affecting her life. Second, a review of the transcript discloses that Judge Green took time to explain trial procedure to Ms. Jackson, to ensure that she had a fair trial. He also offered to adjourn to another date for closing arguments to give the parties time to prepare. Finally, Judge Green reserved his decision at the end of the trial and gave comprehensive reasons for his findings on all material issues.

[14] In sum, Ms. Jackson's appeal cannot succeed based on the allegation of bias with respect to the trial judge.

**b) Disclosure**

[15] Ms. Jackson's argument about not receiving the disclosure she ought to have received before trial was not well-developed. In her written material, she states the following:

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> My several attempts to reach out to the crown and request disclosure that was never received 320.34 cc. Not [*sic*] of the condition [*sic*] set out were met.

[16] It is understood that Ms. Jackson's written material is referencing s. 320.34 of the *Criminal Code*, which pertains to the disclosure required where breath samples are taken:

> 320.34 (1) In proceedings in respect of an offence under section 320.14, the prosecutor shall disclose to the accused, with respect to any samples of breath that the accused provided under section 320.28, information sufficient to determine whether the conditions set out in paragraphs 320.31(1)(a) to (c) have been met, namely:
>
> (a) the results of the system blank tests;
>
> (b) the results of the system calibration checks;
>
> (c) any error or exception messages produced by the approved instrument at the time the samples were taken;
>
> (d) the results of the analysis of the accused's breath samples; and
>
> (e) a certificate of an analyst stating that the sample of an alcohol standard that is identified in the certificate is suitable for use with an approved instrument.
>
> (2) The accused may apply to the court for a hearing to determine whether further information should be disclosed.
>
> (3) The application shall be in writing and set out detailed particulars of the information that the accused seeks to have disclosed and the likely relevance of that information to determining whether the approved instrument was in proper working order. A copy of the application shall be given to the prosecutor at least 30 days before the day on which the application is to be heard.
>
> (4) The hearing of the application shall be held at least 30 days before the day on which the trial is to be held.
>
> (5) For greater certainty, nothing in this section limits the disclosure to which the accused may otherwise be entitled.

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[17] This section had no application to the prosecution against Ms. Jackson, as no breath sample was taken from her.

[18] Relatedly, Ms. Jackson raised no issues with respect to inadequate disclosure with Judge Green. There is no evidence of wrongful non-disclosure before me. Ms. Jackson has not met her onus, as discussed in *R v Cathcart*, 2019 SKCA 90 at paras 35-41, 380 CCC (3d) 357.

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**c) Lawfulness of the vehicle stop**

[19] Ms. Jackson alleges that Cst. Golden did not have lawful authority to stop her vehicle at the time of the incident, and that she was therefore subject to an arbitrary detention and thereafter an unlawful search and seizure.

[20] Judge Green accepted Cst. Golden's evidence that he stopped Ms. Jackson's vehicle to check her driver's licence, registration and sobriety, and the mechanical fitness of her vehicle.

[21] In *R v Ladouceur*, [1990] 1 SCR 1257 at 1272 [*Ladouceur*], the Supreme Court of Canada considered the constitutionality of the following provision from Ontario's *Highway Traffic Act*, RSO 1980, c 198 (since rep):

> 189a--(1) A police officer, in the lawful execution of his duties and responsibilities, may require the driver of a motor vehicle to stop and the driver of a motor vehicle, when signalled or requested to stop by a police officer who is readily identifiable as such, shall immediately come to a safe stop.

[22] The Court concluded that stops pursuant to this provision to check a driver's license, insurance or sobriety, or the mechanical condition of their vehicle, constituted an infringement of the right to be free from arbitrary detention, but one that is reasonable and demonstrably justified in a democratic society.

[23] Here, Cst. Golden stopped Ms. Jackson pursuant to s. 209.1(1) of *The*

*Traffic Safety Act*, SS 2004, c T-18.1 [*TSA*]:

> 209.1(1) A peace officer may require the person in charge of or operating a motor vehicle to stop that vehicle if the peace officer:
>
> (a) is readily identifiable as a peace officer; and
>
> (b) is in the lawful execution of his or her duties and responsibilities.
>
> (2) A peace officer may, at any time when a driver is stopped pursuant to subsection (1):
>
> (a) require the driver to give his or her name, date of birth and address;
>
> (b) request information from the driver about whether and to what extent the driver consumed, before or while driving, alcohol or any drug or other substance that causes the driver to be unable to safely operate a vehicle; and
>
> (c) if the peace officer has reasonable grounds to believe that the driver has consumed alcohol or a drug or another substance that causes the driver to be unable to safely operate a vehicle, require the driver to undergo a field sobriety test.
>
> (3) No person in charge of or operating a motor vehicle shall, when signalled or requested to stop by a peace officer pursuant to subsection (1), fail to immediately bring the vehicle to a safe stop.
>
> (4) No person in charge of or operating a motor vehicle shall fail, when requested by a peace officer, to comply with the requests of a peace officer pursuant to subsection (2).

[24] In *R v Koma*, 2015 SKCA 92, [2015] 11 WWR 492 [*Koma*], the Court of Appeal commented upon police powers to stop vehicles for the reasons identified in *Ladouceur*, both at common law and pursuant to s. 209.1 of the *TSA*:

> [78] Aside from *R v Mann* [2004 SCC 52, [2004] 3 SCR 59], police officers have the common law authority to briefly detain

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> individuals in random traffic stops to check the sobriety of a driver (see *R v Orbanski*, 2005 SCC 37 at para 41, [2005] 2 SCR 3; *R v Dedman*, [1985] 2 SCR 2 at para 10) and the statutory authority to do that and more (see *R v Orbanski*, para. 41; and *R v Ladouceur*, [1990] 1 SCR 1257). This authority arises in the context of motor vehicle use, which is a licensed activity subject to state regulation and state control for the protection of life and property (see *R v Dedman*, p. 35). While a routine traffic stop is an arbitrary detention, the infringement of s. 9 in such circumstances is one that is reasonable and demonstrably justified in a free and democratic society (see *R v Ladouceur*, p. 1288). The power to briefly detain a motorist equips police officers with a legal tool, having minimal intrusion on the motorist's *Charter* rights, to assist the police in detecting and dealing with impaired drivers. The power is conferred on police officers by the operational requirements of the scheme of interlocking federal and provincial statutory laws that regulate such activities (see the reasons of Charron J. in *R v Orbanski*, paras. 24–27). To be clear, however, unlike the investigative detention power described in *R v Mann*, the police do not need to hold a reasonable suspicion that a crime or traffic safety infraction has been committed to *randomly stop and detain* a motorist under such common law or statutory authority.
>
> [Emphasis in original]

[25] Judge Green's finding of fact regarding the reason for Cst. Golden stopping Ms. Jackson's vehicle was grounded in the evidence. As identified in *Ladouceur* and *Koma*, the traffic stop did not breach Ms. Jackson's *Charter* rights to be free from arbitrary detention or unreasonable search and seizure. Accordingly, Judge Green did not err in concluding that the traffic stop did not breach Ms. Jackson's *Charter* rights.

### d) Lawfulness of the SoToxa demand and test

[26] Cst. Golden stopped Ms. Jackson's vehicle at about 3:00 a.m. He noted an odour of freshly smoked cannabis emanating from inside her vehicle. He also noted that Ms. Jackson's pupils were dilated and that her eyes appeared glossy. This caused Cst. Golden to suspect that Ms. Jackson had cannabis in her body. At 3:10 a.m., Cst.

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Golden read Ms. Jackson a demand to provide a sample of oral fluid into the SoToxa. Ms. Jackson indicated that she understood the demand. Cst. Golden then placed Ms. Jackson in the back of his police vehicle. He retrieved the SoToxa from the passenger side of his police vehicle and Ms. Jackson began the test at 3:15 a.m. By 3:18 a.m., a sufficient sample had been obtained. At 3:28 a.m., the SoToxa indicated that the sample tested positive for tetrahydrocannabinol [THC].

[27] Part of Ms. Jackson's defence at trial was her allegation that Cst. Golden needed to radio another officer for the SoToxa because he did not have it with him. Judge Green rejected this allegation, relying upon Cst. Golden's evidence. Judge Green concluded that Ms. Jackson's witness tendered in support of her allegation, Shannon Brewer, was not credible. He had ample reasons to do so. For example, when Ms. Brewer was confronted with video evidence contradicting her testimony, she said that the police vehicle's video was wrong, rather than her account.

[28] Cst. Golden made the demand that Ms. Jackson provide a sample into the SoToxa pursuant to s. 320.27(1)(c) of the *Criminal Code*:

> 320.27 (1) If a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that the person has, within the preceding three hours, operated a conveyance, the peace officer may, by demand, require the person to comply with the requirements of either or both of paragraphs (a) and (b) in the case of alcohol or with the requirements of either or both of paragraphs (a) and (c) in the case of a drug:
>
> …
>
> > (c) to immediately provide the samples of a bodily substance that, in the peace officer's opinion, are necessary to enable a proper analysis to be made by means of approved drug screening equipment and to accompany the peace officer for that purpose.

[29] The demand occurred at 3:10 a.m., approximately 10 minutes after Cst.

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Golden stopped Ms. Jackson's vehicle. Ms. Jackson began the test at 3:15 a.m.

[30] Judge Green determined that Cst. Golden's demand was lawful, with respect to the "immediacy" requirement in s. 320.27(1)(c). He cited *R v Wright*, 2023 SKKB 236 at para 128, 543 CRR (2d) 261, for the proposition that the reference to "immediately" in s. 320.27(1)(c) does not necessarily mean "this very second". Rather, it denotes a sense of urgency or promptness that can vary depending on the specific circumstances of a case. Judge Green concluded that there was no unreasonable or unjustified delay between Cst. Golden's making of the demand and the administration of the test with the SoToxa:

> Having heard the evidence at the *voir dire*, I am satisfied and find that Constable Golden accurately recounted the chronology of events after he stopped Ms. Jackson.
>
> I am further satisfied and find that he had the SoToxa drug screening device with him in the front seat of his vehicle. The officer-recounted chronology and the presence of the SoToxa device were in my view corroborated by the video in Exhibit D-1 shown to him in cross-examination. I am not satisfied that the video was edited or doctored or changed but find it was an accurate record of what happened that night.
>
> As I accept Constable Golden's account, I do not accept that he called other officers to bring the drug screening device to him. I am satisfied and find that he had the SoToxa device in the front seat of his vehicle and asked another officer to bring a blood testing device to the hospital.
>
> As well, I don't find credible the evidence of Ms. Brewer, a person hiding from Constable Golden because she was breaching a court ordered – a court order, and a witness who had no response to the video in Exhibit D-1 other than to say this contradictory video evidence was, to use her words, wrong.
>
> As a result, I am satisfied that the SoToxa drug screening device test was taken by Constable Golden from Ms. Jackson immediately or without delay or forthwith. I am satisfied it was done without any unreasonable or unjustified delay.
>
> As a further result, I am not satisfied that was a – that there was

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> a violation of Ms. Jackson's rights under the *Charter* respecting the roadside drug test and the subsequent blood demand, and her application under s. 24(2) of the *Charter* is dismissed.
>
> [Trial Transcript dated July 18 and August 30, 2024: p T119, lines 15-41; p T120, line 1]

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[31] There is no basis to interfere with Judge Green's conclusions, above. Based on the chronology given by Cst. Golden, Judge Green was correct in concluding that the SoToxa test was administered within the temporal requirement of s. 320.27(1)(c). The test started within five minutes of the demand. This relatively brief period is one that can be reasonably expected when considering that an officer needs to explain how to complete the test to a detained person, and that it "is a little bit more involved" than the approved screening device for alcohol: Transcript, p T19, lines 27-28. The Supreme Court has held, in the context of a demand to submit to testing by an approved screening device for alcohol "forthwith", that a delay of 15 minutes from the demand to the commencement of the test may be permissible in appropriate circumstances: *R v Bernshaw*, [1995] 1 SCR 254 [*Bernshaw*].

[32] Judge Green did not err in concluding that the demand and testing of Ms. Jackson's oral fluid via the SoToxa was conducted in accordance with s. 320.27(1)(c) of the *Criminal Code*.

**e) Right to counsel**

[33] At trial, Ms. Jackson did not argue that her right to counsel was breached, and new arguments should generally not be entertained for the first time on an appeal: *R v Ahmed*, 2019 SKCA 47 at para 15, [2019] 10 WWR 99.

[34] Ms. Jackson's argument seems to be that she ought to have been advised of her right to counsel prior to the SoToxa test being administered. I say this because there is no dispute that she was advised of her right to counsel promptly after the test was administered, and that she declined the opportunity to contact counsel.

[35] Ms. Jackson has provided no authority that supports her argument. There is ample authority that an individual does not have the right to counsel when asked to comply with a lawful screening device demand or field sobriety test: *Bernshaw*; *R v Orbanski; R v Elias*, 2005 SCC 37, [2005] 2 SCR 3.

**f) No requirement for nurse to form an opinion regarding impairment**

[36] During the hearing before me, Ms. Jackson submitted that s. 320.28(2)(b) of the *Criminal Code* required the nurse who took her blood at the hospital to form an opinion with respect to her impairment. This provision states:

> **320.28** …
>
> (2) If a peace officer has reasonable grounds to believe that a person has operated a conveyance while the person's ability to operate it was impaired to any degree by a drug or by a combination of alcohol and a drug, or has committed an offence under paragraph 320.14(1)(c) or (d) or subsection 320.14(4), the peace officer may, by demand, made as soon as practicable, require the person to comply with the requirements of either or both of paragraphs (a) and (b):
>
> …
>
> (b) to provide, as soon as practicable, the samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, are necessary to enable a proper analysis to be made to determine the person's blood drug concentration, or the person's blood drug concentration and blood alcohol concentration, as the case may be, and to accompany the peace officer for that purpose.

[37] Apart from it not being raised at trial, Ms. Jackson's argument is based on a misunderstanding of what s. 320.28(2) required in the circumstances.

[38] In order to make a blood demand, Cst. Golden was required to believe on reasonable grounds that Ms. Jackson's ability to operate a conveyance was impaired to

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any degree by a drug, or that she had committed an offence under s. 320.14(1)(c); that is, having a blood drug concentration equal to or in excess of the prescribed concentration after ceasing to operate a conveyance within the preceding two hours. In this case, Judge Green admitted into evidence the result of the SoToxa test which, along with Cst. Golden's observations, supported Cst. Golden's grounds for the blood demand.

[39] The nurse who took samples of blood from Ms. Jackson was required to form the opinion that the samples were necessary to enable a proper analysis of Ms. Jackson's blood drug concentration to be made. The certificate of a qualified technician entered into evidence as Exhibit P-1 pursuant to s. 320.32 of the *Criminal Code* provided the requisite evidence in this regard.

**g) Proof of impairment not required for the conviction**

[40] While Ms. Jackson contends that there was insufficient proof that she was impaired at the time of the offence, proof of impairment is not required for a conviction under s. 320.14(1)(c) of the *Criminal Code*. As previously mentioned, it is akin to the "over .08" offence for blood alcohol concentration, which does not require proof of impairment. I note *R v Boucher*, 2005 SCC 72 at para 33, [2005] 3 SCR 499:

> 33 Evidence that there are no symptoms is indeed very relevant to the charge of impaired driving. In fact, this explains why, when the prosecution closed its case, it asked the judge to acquit Mr. Boucher on that charge. The situation is quite different for the charge of driving with a blood alcohol level over 80 mg. The offence of driving with a level exceeding 80 mg does not require proof of impairment. The absence of symptoms of impairment is generally not sufficient to constitute evidence to the contrary that can be used to rebut the presumption of accuracy. This is because a lack of evidence of the usual symptoms of impairment, such as staggering and slurred speech, does not provide information about the actual blood alcohol level. Symptoms such as these usually accompany extremely high blood alcohol levels. Conversely, very low levels are generally

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> consistent with an absence of symptoms. An absence of symptoms is therefore not significant in itself if the court does not know the accused's level of alcohol tolerance.
>
> [Emphasis added]

[41] Accordingly, because the offence of which Ms. Jackson has been convicted does not require proof of impairment, this argument in support of her appeal fails.

**h) Minimum sentence imposed**

[42] During the hearing before me, Ms. Jackson contended that there was not a minimum driving prohibition associated with her conviction pursuant to s. 320.14(1)(c) of the *Criminal Code*. However, she referred to the "offence grid" for s. 320.14(4) in *Martin's Criminal Code* when she was making her submissions, rather than that for s. 320.14(1).

[43] Subsections 320.24(1) and (2) of the *Criminal Code* state:

> **320.24** (1) If an offender is found guilty of an offence under subsection 320.14(1) or 320.15(1), the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating the type of conveyance in question during a period to be determined in accordance with subsection (2).
>
> (2) The prohibition period is
>
> > (a) for a first offence, not less than one year and not more than three years, plus the entire period to which the offender is sentenced to imprisonment;
> >
> > …
>
> [Emphasis added]

[44] In this case, Ms. Jackson's blood drug concentration for THC did not equal or exceed the prescribed drug concentration for THC under s. 320.14(1)(c) of the

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*Criminal Code*, although it exceeded the prescribed amount for a conviction under s. 320.14(4). However, Ms. Jackson's blood drug concentration for methamphetamine exceeded the prescribed drug concentration for methamphetamine under s. 320.14(1)(c) of the *Criminal Code*, which is "any detectable level", and this grounded the conviction pursuant to s. 320.14(1)(c).

[45] Judge Green was required to impose a one-year driving prohibition as a consequence of Ms. Jackson's conviction pursuant to s. 320.14(1)(c) of the *Criminal Code*. In addition, he imposed the minimum $1,000 fine pursuant to s. 320.19(1)(b)(i) and waived payment of the victim fine surcharge. There is no basis to intervene with respect to the sentence imposed.

## IV. Disposition

[46] Ms. Jackson's appeal against her conviction and sentence is dismissed.

J.
M.J. MORRIS

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