

BETWEEN:

**ANTHONY PRIOR**

Appellant

and

**ROBERT MOLE**

Respondent



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**ANNOTATED**

**APPELLANT'S REPLY**

**Part I:** We certify that this submission is in a form suitable for publication on the internet.

**Part II: Argument**

**No reasonable grounds for believing**

1. The matters relied on by Constable Blansjaar did not constitute reasonable grounds for believing that because of his intoxication, Mr Prior may intimidate, alarm or cause substantial annoyance to people; or was likely to commit an offence, within the meaning of s 128(1)(c)(iii) or (iv) of the *Police Administration Act* (NT) (**PA Act**).

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Matters relied on by Constable Blansjaar

2. The matters relied on by Constable Blansjaar as the grounds for believing the matters in s 128(1)(c)(iii) or (iv) were Mr Prior's general demeanour and behaviour, Constable Blansjaar's policing experience and the presence of people who appeared alarmed.<sup>1</sup>

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<sup>1</sup> Court of Summary Jurisdiction, Transcript of Proceeding (14 May 2015) (**Transcript**) at 29, 36, 42, **AB 35, 42, 48**.

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*Mr Prior's general demeanour and behaviour*

3. Constable Blansjaar did not know Mr Prior before the incident; he had no previous dealings with him, and knew nothing of his record.<sup>2</sup> At the time Constable Blansjaar put Mr Prior in protective custody, Mr Prior's general demeanour and behaviour, as observed by Constable Blansjaar, had been:
- (a) Mr Prior gave Constable Blansjaar and Constable Fuss "the bird" and shouted something at them as the police were driving past.<sup>3</sup> Constable Blansjaar could hear Mr Prior shouting, but could not make out the words, though he thought the tone sounded angry and abusive.<sup>4</sup> Mr Prior was standing at the time.<sup>5</sup>
  - 10 (b) As the police parked their car, Mr Prior sat down on a shop window ledge and picked up a large plastic bottle that had red liquid in it.<sup>6</sup>
  - (c) Constable Blansjaar walked straight up to Mr Prior and asked him to come back to the police vehicle, which Mr Prior did. Mr Prior was a little bit unsteady on his feet, but not staggering about.<sup>7</sup>
  - (d) Constable Fuss asked why Mr Prior had given them "the bird". Mr Prior's response was "[b]ecause youse are just cunts and last week you gave me the finger".<sup>8</sup>
  - (e) Mr Prior smelled strongly of liquor, he was very aggressive and belligerent, his eyes were bloodshot and he was very disheveled in appearance.<sup>9</sup>
  - 20 4. Constable Blansjaar immediately informed Mr Prior that he was in protective custody.<sup>10</sup>

*Constable Blansjaar's experience*

5. Constable Blansjaar relied on his experience as a police officer which told him that there was a good chance that, if the police left, Mr Prior would simply purchase more alcohol and continue drinking.<sup>11</sup> Constable Blansjaar said this was an "educated

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<sup>2</sup> Transcript at 31, **AB 37**.

<sup>3</sup> Transcript at 26, **AB 32**.

<sup>4</sup> Transcript at 26, **AB 32**.

<sup>5</sup> Transcript at 26, **AB 32**.

<sup>6</sup> Transcript at 27, **AB 33**.

<sup>7</sup> Transcript at 28, **AB 34**.

<sup>8</sup> Transcript at 33, **AB 39**.

<sup>9</sup> Transcript at 27, **AB 33**.

<sup>10</sup> Transcript at 33, **AB 39**.

<sup>11</sup> Transcript at 42, **AB 48**.

assumption”.<sup>12</sup>

*Presence of members of the public who appeared alarmed*

6. Constable Blansjaar gave no evidence of his grounds for believing that, because of his intoxication, Mr Prior might intimidate, alarm or cause substantial annoyance to people, once the police officers left the scene.

**Grounds must be rationally connected to belief**

7. The grounds relied on must be rationally connected to the belief required by ss 128(c)(iii) and 128(c)(iv) of the PA Act: the requisite belief must be supported by, and rationally related to, “probative material on logical grounds”.<sup>13</sup> That is the ordinary meaning of “reasonable grounds *for* believing” that the requisite matters pertain.<sup>14</sup>

Grounds for believing Mr Prior was likely to commit an offence

8. Constable Blansjaar’s evidence was that if he did not take Mr Prior into protective custody, Mr Prior was most likely going to commit further offences, in particular in relation to the *Liquor Act* (NT) or the “Summary Act” (presumably, the *Summary Offences Act* (NT)), such as drinking in a public place or disorderly behavior.<sup>15</sup>
9. Constable Blansjaar’s observations of Mr Prior’s general demeanour and behaviour and his (unparticularised) prior police experience<sup>16</sup> did not provide reasonable grounds for Constable Blansjaar believing the Mr Prior was likely to recommence drinking in a public place or behave in a disorderly manner after the police left.
- 20 10. Constable Blansjaar’s observations of Mr Prior’s general demeanour and behaviour were essentially (a) that Mr Prior was intoxicated and (b) that he was aggressive and belligerent *to the police*. This did not rationally bear on the question whether, because of his intoxication, Mr Prior was likely to re-commence drinking. There was no evidence that Mr Prior said he would re-commence drinking, nor any evidence of any action by Mr Prior that suggested that he was likely to re-commence drinking after the police left. Constable Blansjaar destroyed Mr Prior’s alcohol, and would have done so regardless of any conversation he had with Mr Prior.<sup>17</sup> There was no evidence that

<sup>12</sup> Transcript at 42, **AB 48**.

<sup>13</sup> Appellant’s Submissions, [48] (citations omitted).

<sup>14</sup> Appellant’s Submissions, [30]

<sup>15</sup> Transcript at 28, **AB 34**.

<sup>16</sup> Transcript at 36, 42, **AB 42, 48**.

<sup>17</sup> Transcript at 42, **AB 48**.

Mr Prior had access to any further alcohol.

11. Constable Blansjaar’s reliance on his “educated assumption” did not rationally bear on the question of whether Mr Prior would re-commence drinking for the reasons set out at paragraphs 59 and 60 of the Appellant’s Submissions.
12. In relation to whether Mr Prior was likely to behave in a disorderly manner, there had been no reports of a disturbance in relation to Mr Prior.<sup>18</sup> There was no suggestion, for example, that Mr Prior had been badgering any shoppers, begging them for money to buy more alcohol or had been arguing with his companions.<sup>19</sup> Mr Prior’s defiant and belligerent behaviour was solely directed to the police who were not alarmed or intimidated.<sup>20</sup>
13. For these reasons, Constable Blansjaar’s observations of Mr Prior’s general demeanour and behaviour and his prior police experience did not rationally affect whether or not Mr Prior was likely to recommence drinking in a public place or behave in a disorderly manner after the police left.

Grounds for believing Mr Prior may intimidate, alarm or cause substantial annoyance to people

14. Before the police arrived, there had been no reports in relation to Mr Prior.<sup>21</sup> There was no evidence as to why Mr Prior’s conduct towards the police gave rise to grounds for believing Mr Prior may intimidate, alarm or cause substantial annoyance to any person after the police left.
15. Constable Blansjaar’s evidence that two parents putting their two children into a car looked quite alarmed<sup>22</sup> was in the context of the police speaking to Mr Prior at the police car. There was no evidence that these people were, or any other member of the public was, alarmed by anything Mr Prior had said or done prior to the police’s involvement.
16. This evidence did not rationally bear on whether Mr Prior may intimidate, alarm or cause substantial annoyance to people.

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<sup>18</sup> Transcript at 36, **AB 42**.

<sup>19</sup> *Prior v Mole* [2015] NTSC 65 at [27], **AB 166**.

<sup>20</sup> *Prior v Mole* [2015] NTSC 65 at [27], **AB 166**.

<sup>21</sup> Transcript at 32, **AB 38**.

<sup>22</sup> Transcript at 29, **AB 35**.

### The failure to meet the precondition vitiates the apprehension

17. The Court of Appeal found that Constable Blansjaar and Constable Fuss “acted to a certain degree on stereotyping the respondent”.<sup>23</sup> They went on to find that the decision was also based on “the officer’s experience over many years of the patterns of behavior of people found intoxicated, drinking in the daytime in public areas close to liquor outlets”,<sup>24</sup> and that Constable Blansjaar was entitled to take that experience (presumably dissected from his stereotyping of Mr Prior, which was “highly undesirable”<sup>25</sup>).
18. The problem is that it was not possible to make such a finding on Constable Blansjaar’s evidence.<sup>26</sup> The policing experience was an integral element of the grounds, because it connected Constable Blansjaar’s brief experience of Mr Prior’s past behaviour with Constable Blansjaar’s belief as to Mr Mole’s likely future behaviour. The articulation of the content of that experience by the Court of Appeal, adopted by the Respondent in its submissions<sup>27</sup> (by reference to cases dealing with “pseudo-expert evidence”<sup>28</sup>), cannot supply the ingredient missing from the evidence actually given by Constable Blansjaar. And in any event, predicting the future behaviour of a human being based on observation of other human beings is not like prediction the behaviour of a semi-trailer,<sup>29</sup> based on observation of other semi-trailers.
19. If Constable Blansjaar’s *actual* grounds were not reasonable grounds for his believing that the requisite matters pertained, then the apprehension of Mr Prior was unlawful.

Dated 25 November 2016

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<sup>23</sup> *Prior v Mole* (2016) 304 FLR 418 at [53], **AB 231-232**.

<sup>24</sup> *Prior v Mole* (2016) 304 FLR 418 at [53], **AB 232**.

<sup>25</sup> *Prior v Mole* (2016) 304 FLR 418 at [53], **AB 232**.

<sup>26</sup> Transcript at 42, **AB 48**.

<sup>27</sup> Respondent’s Annotated Submissions, filed 18 November 2016, [33].

<sup>28</sup> In *Cross on Evidence*, JD Heydon agreed that this description by the trial judge of the testimony at issue in *Weal v Bottom* (1966) 40 ALJR 436 was apt: JD Heydon, *Cross on Evidence* (LexisNexis Butterworths, 10<sup>th</sup> ed, 2014 at [29025]).

<sup>29</sup> *Weal v Bottom* (1966) 40 ALJR 436.