C.A. № A-226-09

COURT OF APPEAL FOR ONTARIO

BETWEEN:

TYSON ROY

(Appellant)

- and -

HER MAJESTY THE QUEEN

(Respondents)

APPELLANT'S / RESPONDENT'S FACTUM
(Select One)

NAME OF LAW FIRM
Address of law firm

Names of Counsel (Include First and Last Names)
Of Counsel for the Appellant / Respondent (select one)

Telephone:
Fax:
Email:

PART I:
INTRODUCTION

1. This case is about the [insert a short summary of the main issue raised by this appeal].

PART II:
SUMMARY OF THE FACTS [do not alter]

2. On the evening of October 31, 2012 officers P.C. Stopp and P.C. Stereo were on a bicycle patrol of a community housing complex. This task is mandated under Community Officers Proactive Policing (C.O.P.P.) initiative of which the said officers were members.

3. During the patrol the officers spotted a group of young black men walking out of an alleyway. None of the men was known to the officers or engaged in a suspicious activity at the time. It was accepted by the trial judge on the evidence that the officers approached the group of young men with the aim of identifying and questioning them.

4. Upon the officers' approach the Appellant, Mr. Roy, separated from the group and started walking back into the alleyway. Mr. Roy was wearing dark, baggy clothes, a baseball hat and carried a small backpack. The officers, having judged that Mr. Roy was trying to avoid them, followed Mr. Roy into the alleyway..

5. Soon after starting to follow Mr Roy P.C. Stopp called out to him, without requesting him to stop. The trial judge accepted on the evidence that at this stage the officers wanted to identify Mr. Roy and have him fill in a "C.C.C." or a Community Contact Card. The officers denied that they wanted to identify Mr. Roy on the basis of his being a young black man.

6. The officers caught up with Mr Roy and requested to speak with him. Mr. Roy stopped and asked whether he had done something wrong. The officers replied that he did not, that they just wanted to talk. They asked him for his name, and dismounted, one of them standing in front of Mr. Roy and the other standing to his side. Mr. Roy hesitantly

provided them with his name. P.C. Stereo incorrectly suspected that the name given was false, but because the surname "Roy" matched that of suspects in another criminal matter, asked Mr. Roy for identification. Mr. Roy replied that he did not think he had identification on his person.

7. At this point P.C. Stopp approached Mr. Roy and assumed a protective stance. P.C. Stereo asked Mr. Roy for his identification again and, upon being told that it was in the backpack, instructed Mr. Roy to get it. Mr. Roy began to take off his backpack and then hesitated. Upon being asked whether he had something which he was not supposed to have Mr. Roy replied, "That depends". P.C. Stopp said that she would have a look herself and reached for the backpack. At this point Mr. Roy started running away from the officers.

8. The officers gave chase, caught up with Mr. Roy, detained and arrested him for obstructing police on grounds that he had provided a false name. This charge was later withdrawn. The trial judge accepted as a fact not disputed by Mr. Roy that during the chase he discarded his backpack, in which the officers discovered both his wallet containing photo identification and a loaded handgun, after the arrest.

9. It was not disputed that Mr. Roy was in possession of a loaded firearm. The defence proceeded on the basis of an application under Section 24(2) of the *Canadian Charter of Rights and Freedoms* to exclude the firearm from evidence. Although the trial judge found that Mr. Roy was unlawfully detained, and that his rights protected by sections 8, 9, 10(a) and (b) of the *Charter* were infringed, the application under s 24(2) was denied. As a result of the application being denied, Mr. Roy was convicted of all charges related to possession of a firearm, and was remanded into custody without bail until a date to be set for sentencing.

10. Mr. Roy has appealed this decision and is challenging it on the issue of the inclusion of the loaded gun in evidence. The Crown is challenging Garcia J.'s finding that the officers' conduct infringed Mr. Roy's rights under ss. 8, 9 and 10 (a) and (b).

11.

> [This is where you will need to summarize the trial judge's decision, by explaining how Justice Garcia decided on each of the four Charter issues. All quotes should be indented and single-spaced (like this paragraph). They must be referenced immediately after the paragraph, noting the page **or** paragraph number of the quote.]

PART III
GROUNDS OF APPEAL

ISSUE ONE: WAS MR. ROY DETAINED IN VIOLATION OF HIS RIGHTS UNDER SECTION 9 OF THE CHARTER WHEN THE POLICE ORIGINALLY STOPPED HIM FOR THE PURPOSE OF COMPLETING A C.C.C.?

12. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

ISSUE TWO: IF NOT, WAS MR. ROY DETAINED AT SOME POINT THEREAFTER AND, IN PARTICULAR, BEFORE HE WAS ASKED ABOUT WHETHER HE HAD ANYTHING IN HIS BACKPACK IN VIOLATION OF HIS SECTION 9, 10(A) AND (B) RIGHTS?

13. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

ISSUE THREE: WAS THE SEARCH OF MR. ROY'S BACKPACK UNREASONABLE AND IN VIOLATION OF HIS RIGHTS UNDER SECTION 8 OF THE CHARTER?

14. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

ISSUE FOUR: IF THE SEARCH WAS UNREASONABLE, SHOULD THE LOADED HANDGUN BE EXCLUDED FROM EVIDENCE PURSUANT TO SECTION 24(2) OF THE CHARTER?

15. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

APPLICATION TO THIS CASE

16. [Insert a concluding statement, summarizing how the preceding arguments support the order you have requested (to grant or deny an exemption to the Appellants).]

PART IV
ORDER REQUESTED

17. It is respectfully requested that [Explain what it is that you are requesting – whether you are requesting that the appeal be granted or dismissed.]

ALL OF WHICH is respectfully submitted by

_____
Name of all four counsel
Of Counsel for the Appellant/Respondent **(Select One)**

DATED AT (LOCATION) this ____th Day of **(month)**, **(year)**

APPENDIX A

AUTHORITIES TO BE CITED

[List all the cases and/or statutes that you have referred to in your factum using proper legal citation. Refer to the explanatory notes, *How to Prepare a Factum*, for formatting guidelines.]