

CANADA / JUDGMENT

R. v. Abdelkader

2025 BCSC 196

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2025 BCSC 196 R. v. Abdelkader

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Abdelkader,

2025 BCSC 196

Date: 20250204

Docket: 51975

Registry: Vernon

Rex

v.

Nabil Mahmoud Abdelkader

Before: The Honourable Justice Shergill

Oral Ruling on Voir Dire #1

Stage 2 - Section 24 Remedy

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Place and Date of Hearing:

Vernon, B.C.

February 3, 2025

Place and Date of Judgment:

Vernon, B.C.

February 4, 2025

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I. Overview

- [1] Mr. Abdelkader is charged with possession of methamphetamine and cocaine for the purposes of trafficking. The offences are alleged to have occurred on May 2, 2020, in Vernon, British Columbia. The drugs were discovered by the Vernon RCMP during a search of Mr. Abdelkader's Jeep vehicle on October 13, 2020 (the "October Search").
- [2] On January 24, 2025, I found a series of Charter breaches in relation to the police investigation. These Reasons are indexed at R. v. Abdelkader, 2025 BCSC 139 (the "Stage 1 Ruling").[1]
- [3] In this second stage of the Charter hearing, I am tasked with deciding the Defence application to exclude evidence under s. 24 of the Canadian Charter of Rights and Freedoms[2]. Mr. Abdelkader seeks the exclusion of the evidence found during the October Search, pursuant to s. 24(2), or alternatively, s. 24(1) of the Charter.

- [4] The Defence submits that cumulatively, the police's conduct in this case was deliberate and egregious, and had a significant impact on Mr. Abdelkader's Charter-protected interests. As a result, admission of the evidence obtained as a result of the Charter violations would bring the administration of justice into disrepute. Consequently, the Court should disassociate itself from the police's conduct by excluding the evidence found in the October Search.
- [5] The Crown submits that while this case is "extremely close to the line", the circumstances in this case weigh in favour of a finding that the admission of the impugned evidence would not bring the administration of justice into disrepute.
- [6] For the reasons that follow, I find that the impugned evidence should be excluded pursuant to s. 24(2) of the Charter.

II. Breaches

- [7] At the conclusion of the Stage 1 inquiry, I found that the police had committed six Charter breaches over the course of the Investigation (five under s. 8, and one under s. 7).
- [8] The section 7 and 8 Charter breaches are summarized below.
- a) Unlawful search on June 24, 2020: On this date, Cst. Hoard entered Mr. Abdelkader's Jeep for the purpose of obtaining its mileage. This search was not authorized by the Search Warrant and violated the Accused's s. 8 Charter rights. Cst. Hoard "was clearly aware of the details of the Search Warrant". It can reasonably be inferred that "Cst. Hoard knew he lacked authority to search the vehicle but proceeded to do so anyways": Stage 1 Ruling, paras. 110, 115.
 - b) Unlawful search on October 13, 2020: On this date, the police violated the Accused's s. 8 Charter rights when the Vernon RCMP, along with Cpl. Fletcher, unlawfully entered the Jeep, dismantled its interior and seized Mr. Abdelkader's private possessions. The Vernon RCMP was in unlawful possession of the Jeep when the warrantless search was conducted. The police officers knew that they did not have grounds to obtain a search warrant, or the legal basis to conduct a warrantless search. The investigating officers "manufactured" public safety concerns in order to get the consent of the Bailiff, who did not have authority to give consent: Stage 1 Ruling, paras. 202(a), 273, 279, 298, and 303-306.
 - c) Unreasonable seizure: From July 20, 2020, onwards, the police retained Mr. Abdelkader's Personal Effects which were found inside the Jeep, without any legal justification. The police were under a duty to return these items pursuant to s. 490(5) and (6) of the Criminal Code. The failure to comply with this duty breached Mr. Abdelkader's s. 8 rights. The breach was compounded by the fact that the police took no steps to return these Personal Effects when the detention order expired in August 2020, despite the police being aware of the expiry date: Stage 1 Ruling, paras. 353-359.

- d) Unreasonable seizure: From at least August 21, 2020, onwards, the police did not return Mr. Abdelkader's Jeep contrary to s. 490(6) of the Criminal Code and s. 8 of the Charter. This failure was due to a combination of the police officers' "ignorance of the law" and their deliberate efforts to circumvent Mr. Abdelkader's due process rights: Stage 1 Ruling, paras. 366-368, 376.
 - e) Non-compliance relating to evidence: The police violated s. 8 of the Charter when they failed to comply with the requirements of s. 490 of the Criminal Code respecting evidence they had collected. Specifically, the police did not obtain a judicial authorization for the ongoing detention of biological samples seized from Mr. Abdelkader's vehicle in May 2020, nor did they return them to Mr. Abdelkader. In addition, the police failed to obtain proper authorization for the continued detention of exhibits seized during the October Search: Stage 1 Ruling, paras. 378-379, 382, 383.
 - f) Abuse of process: The police committed an abuse of process and thereby breached Mr. Abdelkader's s. 7 Charter rights. Under the guise of investigating a hit and run, they launched a drug investigation into Mr. Abdelkader. The police targeted Mr. Abdelkader because they believed he was involved in the drug trade, and had been "untouchable" thus far. The police acted in concert with the Civil Forfeiture Office in a deliberate and orchestrated effort to bypass statutory safeguards under the regime set out in s. 490 of the Criminal Code, and deprive Mr. Abdelkader of due process. This misconduct violated s. 7 of the Charter: Stage 1 Ruling, paras. 396-398, 432-434, 439, 446-451.
- [9] In addition to the above, the Crown concedes that an additional violation of Mr. Abdelkader's s. 8 Charter rights occurred when the police obtained his fingerprints on November 27, 2020. On that day, the Vernon RCMP executed a warrant to obtain Mr. Abdelkader's fingerprints. The warrant was obtained on the basis of what was found during the October Search. The Crown concedes that based on the Court's findings on the Stage 1 Ruling, the warrant for Mr. Abdelkader's fingerprints cannot stand.

III. Legal Framework

- [10] I turn now to the legal framework that governs this second stage inquiry.
- [11] The Accused brings this application for exclusion of evidence primarily under s. 24(2) of the Charter. The s. 24(1) argument is only advanced in the alternative. As such, all counsel agree that in the event that I find the evidence should be excluded under s. 24(2) of the Charter, there is no need for me to address the s. 24(1) arguments.
- [12] Section 24 of the Charter provides as follows:

Enforcement of guaranteed rights and freedoms

24(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

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.

[13] Section 24(1) and (2) must be read together "to create a harmonious interpretation": R. v. 974649 Ontario Inc., 2001 SCC 81 at para. 21.

[14] The remedy available under s. 24(2) of the Charter is triggered whenever evidence is "obtained in a manner" that violates an accused's charter rights: R. v. Tim, 2022 SCC 12 at para 74.

[15] However, s. 24(2) "does not create an automatic exclusionary rule when evidence is obtained in breach of a Charter right". Rather, the burden falls on the accused to establish that, "having regard to all the circumstances, the admission of the evidence would bring the administration of justice into disrepute": Tim at para 75.

[16] The s. 24(2) inquiry examines the impact of admitting evidence obtained in breach of the accused's Charter rights, on the public's confidence in the justice system over the long term: Tim, at para. 74..

[17] The court conducts a s. 24(2) inquiry in 2 stages. In the first stage, a threshold inquiry is held to determine whether there is "a sufficient nexus between the breach of the Charter right and the evidence that is sought to be excluded, such that it was "obtained in a manner" that breached the Charter: R. v. Bottomley, 2023 BCSC 603 at para. 16.

[18] If the threshold is met, the court then undertakes an "evaluative inquiry". This inquiry is aimed at determining whether, after considering all the circumstances, admission of the impugned evidence would bring the administration of justice into disrepute: Tim at para. 74.

[19] The second stage of the inquiry is conducted using the analytical framework established in R. v. Grant, 2009 SCC 32. In accordance with Grant, the following three factors must be weighed and balanced when considering whether relief under s. 24(2) is warranted:

- i. The seriousness of the Charter-infringing state conduct;
- ii. The impact of the breach on the Charter-protected interests of the accused; and
- iii. Society's interest in the adjudication of the case on its merits.

("Grant factors")

[20] These factors are considered holistically, and not in isolation. The analysis is highly fact specific, and the court's focus should be on public confidence and the long-term integrity of the administration of justice: *Tim* at para. 98.

[21] With these guidelines in mind, I turn to consider the circumstances in this case.

IV. Analysis

[22] The Crown concedes that the s. 24(2) threshold is met as the impugned evidence in this case was obtained by way of a search that the court found was unlawful.

[23] I turn to the second stage of the analysis using the Grant factors.

A. Seriousness of Conduct

[24] The first line of inquiry under Grant considers the seriousness of the Charter-infringing state conduct. When considering the seriousness of this conduct, the court must "situate that conduct on a scale of culpability": *R. v. Le*, 2019 SCC 34 at para. 143, citing *R. v. Paterson*, 2017 SCC 15, at para. 43.

[25] In *Grant*, the court placed state conduct which constitutes "inadvertent or minor violations" at the low end of the culpability scale, and "wilful or reckless disregard of Charter rights" at the high end: *Grant* at para. 74.

[26] The Crown concedes that the Charter infringing state conduct in this case is serious and falls at the high end of the culpability scale. According to the Crown, the presence of this factor weighs strongly towards exclusion of the evidence.[3]

[27] To understand the reason for Crown Counsel's concession, it is useful to consider the circumstances of this case which place it on the high end of the scale.

[28] There are numerous factors which assist in situating state misconduct on a spectrum of severity. These factors include: ignorance of charter obligations on the part of the police; misleading testimony; police conduct which shows a "pattern of disregard"; and evidence of systemic misconduct.

[29] These factors are all present in this case, and explained as follows:

- a) Ignorance of Charter obligations on the part of the police: As held in *Tim* at para. 85, ignorance of the law cannot excuse non-compliance with the Charter. Police are "expected to know what the law is" and are "obliged to exercise their powers in conformity with what the courts have said": *R. v. Reddy*, 2010 BCCA 11 at para. 97. To excuse police misconduct as good faith (and therefore a minor infringement of Charter rights), requires the state to show that the police "conducted themselves in [a] manner . . . consistent with what they subjectively, reasonably, and non-negligently believe [d] to be the law": *Le* at para. 147, quoting *R. v. Washington*, 2007 BCCA 540 at para. 78. These mitigating factors are absent in

this case.

In this case, Cst. Hoard did not understand the police obligations under s. 490 of the Criminal Code; nor did he and Sgt. Evans understand the impact of s. 23.1 of the Civil Forfeiture Act. In addition, both officers viewed civil forfeiture as a "tool" that was available to them to justify further detention of items, despite the s. 490 regime in the Criminal Code: Stage 1 Ruling at paras. 364-368, 374-375.

- b) Police conduct which shows a "pattern of disregard": To determine whether there has been a "pattern of disregard of the Charter by authorities", Charter violations should be assessed holistically rather than individually: Grant, at para. 75; R. v. Bohn, 2000 BCCA 239; R. v. Lauriente, 2010 BCCA 72 at para. 30.

In this case, the pattern of disregard was evident throughout the police investigation and reflected in numerous and repeated violations of Charter rights: Stage 1 Ruling at paras. 115, 184, 268, 273 and 291, 433.

- c) Misleading testimony: At the heart of the admissibility inquiry under section 24 (2) of the Charter, lies the integrity of the justice system and the truth-seeking function of the courts. "Few actions more directly undermine both of these goals than misleading testimony in court from persons in authority": R. v. Harrison, 2009 SCC 34 at para. 26, quoting from Cronk J.A.'s reasons at para. 160.

In this case, I found that the police's justifications for keeping the vehicle were not credible; that Sgt. Evans was not forthright with Cpl. Fletcher regarding the legal authority for conducting the October Search; and that Sgt. Evans falsely denied this in court: Stage 1 Ruling at paras. 75, 434; Trial Transcript, October 30, 2024, p. 15, line 16 to p. 16, line 18.

- d) Evidence of systemic misconduct: The presence of misconduct on an institutional or widespread level can aggravate the seriousness of the breach: Harrison at para. 25.

In this case, police officers in the Drug Unit and the Asset Forfeiture Unit, along with a Director at the Civil Forfeiture Office ("CFO"), worked in concert to circumvent Mr. Abdelkader's legal rights under s. 490, and to also impede Mr. Abdelkader's ability to pursue his legal rights: Stage 1 Ruling at paras. 412-415.

[30] In Le, the SCC noted that the trial judge's finding that the Charter breaches were at the serious end of the spectrum, was reasonable as follows:

[24] On the facts found by him, this conclusion was a reasonable one. The officer's determination to turn up incriminating evidence blinded him to constitutional requirements of reasonable grounds. While the violations may not have been "deliberate", in the sense of setting out to breach the Charter, they were reckless and showed an insufficient regard for Charter rights. Exacerbating the situation, the departure from Charter standards was major in degree, since reasonable grounds for the initial stop were entirely non-existent.

- [31] Those comments are apt in this case.
- [32] First, the police did not have reasonable grounds to arrest or charge Mr. Abdelkader.
- [33] Second, the police officers' determination to turn up incriminating evidence against Mr. Abdelkader "blinded" them to the constitutional requirements of ensuring that they had legal authorization to search the Jeep. Indeed, the police misconduct in this case goes far beyond mere negligence. The police deliberately flouted due process and wilfully circumvented statutory limits on their authority when it suited their interests.
- [34] Third, the RCMP worked with the CFO in a coordinated and intentional effort to undermine Mr. Abdelkader's due process rights. This included the abuse of statutory powers. When they could not find evidence to link Mr. Abdelkader to the Hit and Run, the police conducted a de facto drug investigation under the "ruse" of the hit-and-run investigation. They did this because they believed he was "untouchable" and a "bad dude". To further these aims, they gained the assistance of the CFO, which filed an unsupportable civil claim, all with the intention of depriving Mr. Abdelkader of his property and rights under the Criminal Code. This conduct was extremely troubling, and driven by "personal" and "improper" motives. It was offensive to the community's sense of fair play and decency: Stage 1 Ruling at paras. 396-449.
- [35] For these reasons, I have no difficulty in finding that the Charter breaches in this case are at the serious end of the spectrum.

B. Impact on the Accused

- [36] The second line of inquiry under s. 24(2) considers the impact of the breach on the applicant's Charter-protected interests.
- [37] The question here is to what extent "the breach actually undermined the interests protected by the right infringed": Grant at para. 76.
- [38] To answer this question, the court identifies the interests that are protected by the relevant Charter rights, and evaluates how seriously the breaches affected those interests: Tim at para. 90.
- [39] As with the first line of inquiry, the impact of a Charter breach is situated on a spectrum. At one end are fleeting, transient, technical, or trivial impacts; at the other end are profoundly intrusive impacts or impacts which seriously compromise the interests which underly the rights that are infringed: Tim at para. 90.
- [40] Notably, the greater the impact on an applicant's protected interests, the greater the risk that the admission of the evidence would bring the administration of justice into disrepute: Tim at para. 90.

- [41] In this case, I found that the police committed six Charter breaches. They violated the Accused's s. 8 Charter rights by failing to have a warrant or lawful reason to search his Vehicle, seizing and detaining his property without lawful authority, and refusing to return his property as required by s. 490 of the Criminal Code. I also found that the police committed an abuse of process by targeting Mr. Abdelkader for improper reasons, and working in concert with the Civil Forfeiture Office to circumvent his rights under s. 490 Criminal Code.
- [42] As a result of those findings, the Crown has conceded a seventh Charter breach under s. 8, which is connected to the obtaining of Mr. Abdelkader's fingerprints on November 27, 2020.
- [43] The Crown submits that the impact on Mr. Abdelkader's Charter rights occasioned by the Charter breaches, is on the low to moderate end of the spectrum; the Defence submits that it is on the high end.
- [44] After considering the authorities and the facts of this case, I characterize the impact of each of the s. 8 Charter breaches as follows:
- a) Unlawful search on June 24, 2020: the police breached Mr. Abdelkader's privacy interest when the officer entered Mr. Abdelkader's Jeep for the purpose of obtaining its mileage. I consider this breach to have had a trivial impact on Mr. Abdelkader's Charter rights. This evidence was potentially discoverable and might have been obtained in a Charter compliant manner.
 - b) Unlawful search on October 13, 2020: the police breached Mr. Abdelkader's privacy interest when they unlawfully entered the Jeep, dismantled a secret compartment located inside it, and seized Mr. Abdelkader's private possessions and fingerprints contained on the possessions. At the time the search was conducted, the police were not in lawful possession of the Jeep. The Jeep had been stored on private property, within Mr. Abdelkader's garage, and seized for a hit and run investigation, and retained by the police long after the hit-and-run investigation had concluded. The police search of the secret compartment, where a reasonable person "would ordinarily expect the utmost privacy", was highly intrusive. The fingerprints linked Mr. Abdelkader to the hidden possessions in the secret compartment, and revealed aspects of his lifestyle and personal activities and choices, to which he had a high expectation of privacy. In the circumstances of this case, the Accused's privacy interest in the Jeep and materials contained in it were at the high end of the spectrum, akin to the privacy expectations one has in their home. I consider this breach to have had a significant impact on Mr. Abdelkader's Charter rights.
 - c) Unreasonable seizure from July 20, 2020: the police retained Mr. Abdelkader's Personal Effects which were found inside the Jeep, and did not return them for 3 months after the expiry of a detention order. By doing so, they deprived Mr. Abdelkader of the use of these items for several months. The personal effects included license plates, insurance documents, first aid kits, survival blankets, packages of Kleenex, a plastic bag containing other items of a personal nature, various receipts and spare change. These are all low cost

items, and easily replaceable. These items were ultimately returned to the Accused. I consider this breach to have had a marginal impact on Mr. Abdelkader's Charter rights.

- d) Unreasonable seizure from at least August 21, 2020: the police did not return Mr. Abdelkader's Jeep when they no longer had authority to hold it, despite the fact that he expressed a desire to have the Jeep returned, and took legal steps to try to have it returned. By doing so, they deprived Mr. Abdelkader of the use of a high-value item, which he continued to pay for and insure, throughout the time that it was being held unlawfully by the police. Through the police's unlawful conduct, the vehicle was ultimately repossessed by the Bank, and Mr. Abdelkader was deprived of it entirely. I consider this breach to have had a significant impact on Mr. Abdelkader's Charter rights.
 - e) Non-compliance relating to evidence: there are two privacy related issues of concern here. First, the police did not obtain a judicial authorization for the ongoing detention of biological samples seized from Mr. Abdelkader's vehicle in May 2020, and failed to return them to Mr. Abdelkader. I consider this part of the breach to have had a mild impact on Mr. Abdelkader's Charter rights. The swabs were taken from a vehicle not a person, and were items that are naturally shed on a daily basis. There is no evidence that the biological samples were tested. The police were in possession of a lawful warrant to obtain this material, and the police could have obtained a further detention order had they sought it. The second issue is the failure of the police to obtain proper authorization for the continued detention of exhibits (plastic baggies and a cardboard box) seized during the October Search. The exhibits contained Mr. Abdelkader's fingerprints, over which he has a significant privacy interest. The consent obtained by the police to hold onto these exhibits was invalid, as it was from the bank and not Mr. Abdelkader. I find that this breach moderately impacted Mr. Abdelkader's Charter rights.
 - f) Obtaining fingerprints without a valid warrant on November 27, 2020: the police executed a warrant to obtain Mr. Abdelkader's fingerprints. However, the warrant was invalid, as it was obtained on the basis of what was found during the October Search. I have already noted that there is a significant privacy interest in fingerprints. In this case, the police subjected Mr. Abdelkader to the embarrassment of being taken away from his family in public, to be fingerprinted, on the basis of what was conceded by the Crown to be an invalid warrant. I consider this breach to have had a significant impact on Mr. Abdelkader's Charter rights.
- [45] It is also worth noting that Mr. Abdelkader's arrest in January 2022, was solely on the strength of the evidence that was unlawfully gathered by the police. The arrest was accompanied by a public press release issued by the police which identified Mr. Abdelkader. Given that Mr. Abdelkader has no criminal record and lives in a small town, the impact on him is significant.
- [46] At this stage of the analysis, the court may consider the impact of the police's abuse of process: *Bottomley*, at para. 88. To that end, I quote the following passage from defence counsel's submission[4], which I find aptly summarizes the concerns that arise:

Over the course of several months, the police improperly targeted Mr. Abdelkader, driven by improper motives. They abused statutory powers and otherwise undermined Mr. Abdelkader's due process rights. In doing so, the police turned Mr. Abdelkader's invocation of his right to legal counsel against him. This all had a real impact upon him and the integrity of the justice system. It impacted Mr. Abdelkader because he was deprived of his vehicle, which in turn required him to retain counsel to seek its return and to defend the civil claim made against him.

[47] When the above circumstances are considered as a whole, I find that the impact on Mr. Abdelkader's Charter rights occasioned by the Charter breaches, is on the high end of the spectrum. This factor weighs heavily in favour of exclusion of the evidence.

C. Society's Interest

[48] On the third Grant factor, the court must determine "whether the truth-seeking function of the criminal trial process would be better served by admission of the evidence, or by its exclusion": Grant at para. 79.

[49] Society has a legitimate expectation that a criminal allegation will be adjudicated on its merits. Members of society have a "collective interest in ensuring that those who transgress the law are brought to trial and dealt with according to law": Grant at para. 79; Tim at para. 96.

[50] In Grant, the court noted that the following factors are important considerations at the stage of the inquiry:

- a) the reliability of the evidence;
- b) the importance of the evidence to the Crown's case; and
- c) the seriousness of the offence;

[51] In this case, I find that the evidence sought to be excluded is reliable. The drug evidence and fingerprints contained on the drugs, are real evidence, and I am not aware of any concerns raised that could impact a finding of reliability. The drugs were found in a Jeep owned by Mr. Abdelkader, and his fingerprints were found on the drugs.

[52] The Crown has submitted that if the drugs and fingerprint evidence are excluded, there will remain no evidence to prosecute Mr. Abdelkader. Thus this evidence is crucial to the Crown's case. The Defence does not dispute the importance of the evidence in this regard.

[53] The seriousness of the offence alleged also cannot be overstated.

[54] As held by the court of appeal in R. v. Omar, 2024 NWTCA 6 at para. 20, this court may consider the impact of the alleged criminal activity in the community which occurred.

- [55] In *R. v. Cade*, 2023 BCSC 158 at para. 139, the Court noted that "Courts have repeatedly emphasized that possession of drugs for the purpose of trafficking is a serious offence that destroys individuals, families, and communities." The Court went on to quote from the decision in *R. v. Aguilera Jimenez*, 2020 YKCA 5, where Justice Dickson described the toll that drug trafficking has on individuals and the community, as follows:
- [49] Cocaine is a highly addictive drug that inflicts untold misery on users, those in their orbit and society generally. It destroys lives, tears families apart and damages communities. For all of these reasons, trafficking in cocaine is considered a serious offence which should attract significant consequences.
- [56] As noted by the Crown,[5] in this case, the police seized approximately 4 kg of methamphetamine and 114 g of cocaine (inclusive of packaging), from an illegal aftermarket compartment located in a Jeep owned by Mr. Abdelkader, that was used in a violent assault. The drugs were found in Vernon, a small community where many families live in the hopes of being able to raise their children away from the scourge of drugs that is endemic to larger city centers.
- [57] According to the expert evidence in this case, the drugs found in Mr. Abdelkader's Jeep were of trafficking level quantities. The yield value of the drugs without cutting, is estimated to exceed \$200,000.
- [58] Nevertheless, I am mindful of the caution by the court in *Grant*, that the seriousness of the offence can "cut both ways". While the public has a "heightened interest" in ensuring that serious offences are prosecuted on their merits, the public also has a "vital interest in having a justice system that is above reproach, particularly where the penal stakes for the accused are high": *Grant* at para. 84
- [59] In this case, the penal stakes for the accused are very high. Drug trafficking on a multi-kilogram level is serious and can attract a high penal sentence. In the case of schedule I or II drugs, the maximum punishment is life imprisonment.
- [60] After having considered all of the factors, I find that this third factor weighs slightly in favour of exclusion of the evidence. While society has a strong interest in ensuring that serious offences are prosecuted on their merits, in this case, this interest is subsumed by the more pressing need to have a justice system which is beyond reproach.

D. Balancing of Grant Factors

- [61] I turn now the final stage of the analysis, which requires the Court to consider all the circumstances, to determine if the admission of the evidence in the proceedings would bring the administration of justice into disrepute.

- [62] The final balancing of the Grant factors is qualitative in nature. The court must weigh its considerations under all three factors to determine whether, on balance and having regard to all the circumstances, admitting the impugned evidence would bring the administration of justice into disrepute in the long-term.
- [63] This is an objective inquiry. The court must ask whether a reasonable person informed of all the relevant circumstances and the values underlying the Charter would conclude that the admission of the evidence would bring the administration of justice into disrepute: Grant at para 68.
- [64] The focus of s. 24(2) is societal. It is aimed at systemic concerns rather than punishing the police or compensating the accused: Grant, at para. 70.
- [65] The conduct of the police does not need to be deliberate, motivated by an ulterior purpose, or involve systemic or institutional abuse in order to favour a remedy under s. 24(2): Grant, at para. 75.
- [66] The Crown submits that while this case is close to the line, on a qualitative analysis, the final balancing of the Grant factors should lead to admission of the evidence, rather than its exclusion.
- [67] I do not agree that this is a close case. I consider the circumstances of this case to clearly support exclusion of the evidence. In this case, the three lines of inquiry in Grant favour exclusion - albeit to different degrees.
- [68] In coming to this conclusion, I am guided by Justice Devlin's decision in Bottomley, where the Court excluded the evidence in circumstances that in my view were less egregious than the facts at bar.
- [69] To that end, it is useful here to repeat paras.447 to 449 of the Stage 1 Ruling, where I summarized the cumulative conduct of the police in this case (which constituted an abuse of process):
- [447] When police learned that a vehicle owned by Mr. Abdelkader had been involved in a hit and run, they seized the opportunity to investigate him. When they were unable to connect Mr. Abdelkader to the hit and run, and with a s. 490 deadline looming, they devised a plan to hold onto the vehicle through the use of the civil forfeiture office, until such time as they could legitimately (in their eyes) conduct a search for a hidden compartment.
- [448] When Mr. Abdelkader made legal and legitimate efforts to recover his vehicle, the police refused to return it, even when the investigation for which it had been seized had concluded. To justify their continued possession of the Vehicle, they engaged in deceptive tactics to retain it beyond July 20,2020, contrary to their statutory obligations under s. 490.

- [449] To assist the Vernon RCMP, the CFO initiated a civil forfeiture action, despite knowing that it was unlikely to proceed, let alone succeed. In light of these realities, it is evident that there was never a bona fide intention to legitimately pursue forfeiture of the vehicle.
- [70] If the evidence is included, it will send a clear message that so long as the police are motivated by their desire to catch the "bad dudes", they have free rein to violate well-established principles of law, in an orchestrated and systemic fashion, and by eliciting the assistance of other government agencies to circumvent the accused's legal rights.
- [71] In my view, a reasonable person informed of all the relevant circumstances and the values underlying the Charter, would conclude that the admission of the evidence gained in this manner, would bring the administration of justice into disrepute.
- [72] The comments of Justice Iacobucci in *R. v. Burlingham*, [1995] 2 S.C.R. 206 are particularly applicable in this case:
- [50] . . . I underscore that we should never lose sight of the fact that even a person accused of the most heinous crimes, and no matter the likelihood that he or she actually committed those crimes, is entitled to the full protection of the Charter. Short-cutting or short-circuiting those rights affects not only the accused, but also the entire reputation of the criminal justice system. It must be emphasized that the goals of preserving the integrity of the criminal justice system as well as promoting the decency of investigatory techniques are of fundamental importance in applying s. 24(2).
- [73] When evidence is obtained in a manner that infringes the Charter, the court must determine whether admitting this evidence will do further damage to the reputation of the justice system: *Bottomley* at para. 135.
- [74] In this case, I find that admission of the impugned evidence will further harm the reputation of the justice system, and bring the administration of justice into disrepute.

V. Conclusion

- [75] The police committed numerous and flagrant breaches of the Accused's s. 8 Charter rights, and also committed an abuse of process in their conduct of the Investigation.
- [76] Admitting evidence in the proceedings that was obtained as a result of these s. 7 and s. 8 Charter violations, would bring the administration of justice into disrepute.
- [77] As a result, I find that it is appropriate to grant the relief sought by the Defence, and exclude the evidence obtained by the Police as a result of the October Search, pursuant to s. 24(2) of the Charter.

"Shergill J."

- [1] All defined terms are imported from the Stage 1 Ruling.

- [2] Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982 c. 11 [Charter].
 - [3] Crown Counsel Submissions on Stage 2 Hearing, para. 27.
 - [4] Defence Counsel Submissions on Stage 2 Hearing, para. 14.
 - [5] Crown Counsel Submissions on Stage 2 Hearing, para. 33.
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