

CANADA / JUDGMENT

R. v. Alexander

2025 BCSC 1909

COURT

Supreme Court of British Columbia

DECIDED

8 August 2025

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2025 BCSC 1909 R. v. Alexander

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Alexander,

2025 BCSC 1909

Date: 20250808

Docket: 90508-2

Registry: Nanaimo

Rex

v.

Peter Anthony Alexander

Before: The Honourable Justice Layton

Oral Reasons for Judgment on s. 11(b) Charter Application

Counsel for the Crown:

C.J. Gibson

Counsel for the Accused:

T.L. Spettigue

Place and Date of Hearing:

Nanaimo, B.C.

August 5, 2025

Place and Date of Judgment:

Nanaimo, B.C.

August 8, 2025

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Introduction

- [1] Mr. Alexander is charged with four counts of possessing a controlled substance for the purpose of trafficking arising out of a police search of a Nanaimo residence on August 2, 2022, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
- [2] Information 90508 charging Mr. Alexander with these offences was sworn on December 22, 2022. He was initially charged along with his co-accused, Amber Blanchard, but the Crown eventually stayed Ms. Blanchard's charges after she completed an alternative measures program.
- [3] Mr. Alexander's 10-day trial is set to start on August 18, 2025. At its projected conclusion on August 29, 2025, and after deducting a 14-day period for which Mr. Alexander waived delay, 31 months and 23 days will have passed since the charges were laid.
- [4] This passage of time exceeds the 30-month ceiling beyond which delay for cases going to trial in superior court is presumptively unreasonable: *R. v. Jordan*, 2016 SCC 27. Mr. Alexander has thus applied under s. 11(b) of the Charter to stay the counts in Information 90508 on the grounds that the delay breached his constitutional right to be tried within a reasonable time.
- [5] The Crown argues that Mr. Alexander's s. 11(b) right has not been breached because, after deducting either or both of two stretches of delay, the remaining delay falls below the Jordan ceiling. First, the Crown says roughly six months of delay should be deducted because Mr. Alexander was evading arrest on the charges and could not be located by police. Second, the Crown contends that a further six months of delay, arising from the adjournment of Mr. Alexander's preliminary inquiry because Ms. Blanchard's counsel was unavailable, should be deducted because that adjournment was necessary to permit him to be tried jointly with

Ms. Blanchard.

- [6] Mr. Alexander argues that neither of these periods of delay should be deducted in determining whether the 30-month ceiling has been exceeded. He says that he was not evading arrest, that the police failed to exercise due diligence in attempting to locate him, and that the delay from the adjournment cannot be reasonably justified by the Crown's desire to try him and Ms. Blanchard jointly.
- [7] In resolving the disputed issues, I will begin by setting out the procedural background of the case, focussing on the areas most relevant to the periods of delay with respect to which the parties disagree. I will then review the general law governing Jordan applications, after which I will analyze whether either or both of the time periods identified by the Crown should be removed from consideration in determining whether the 30-month presumptive deadline has been exceeded.

Background

- [8] On August 2, 2022, the police executed a search warrant at a residence in Nanaimo. Several individuals were inside, including Mr. Alexander and Ms. Blanchard. The police located various controlled substances in the residence.
- [9] Charges were not laid against Mr. Alexander and Ms. Blanchard at that time, and both were released after their initial arrest at the scene.
- [10] On August 19, 2022, Mr. Alexander was charged with seven counts of possessing a controlled substance for the purpose of trafficking in Port Alberni on February 3, 2022. He was already on an undertaking that included a requirement that he attend for a first appearance on this matter on August 24, 2022.
- [11] On August 31, 2022, Mr. Alexander was arrested and released on a release order replacing the undertaking, with his next court date in the Port Alberni matter set for September 21, 2022. The release order included conditions that Mr. Alexander:
- (a) report in person to a bail supervisor in Nanaimo by September 1, 2025, and thereafter as directed but not less than once per week;
 - (b) provide the bail supervisor with his phone number and his address of 13-309 Hillcrest Avenue, Nanaimo, and not change his phone number or address without the bail supervisor's prior written permission; and
 - (c) obey a curfew from 6:00 p.m. to 5:00 a.m. at the place where he lives and regularly sleeps.
- [12] Pursuant to the release order, on September 1, 2022 Mr. Alexander reported to a bail supervisor at Nanaimo Community Corrections. He provided his address and indicated that he would notify a bail supervisor prior to changing it. His bail supervisor then provided this address to the Nanaimo RCMP.

- [13] On September 14, 2022, an arrest warrant was issued for Mr. Alexander. This warrant appears to have resulted from a nonappearance in court the day before on two provincial driving offences. The record of proceedings suggests that the warrant may have been executed "on the street", at which time police gave him an appearance notice for October 25, 2022. There were court appearances on these charges on that date, and also on November 1, 15 and 22, 2022, at which defence counsel appeared as agent. At the last of these appearances, the matter was set for disposition by way of a guilty plea on February 1, 2023.
- [14] Returning to the chronology with respect to the Port Alberni matter, on September 16, 2022 Mr. Alexander reported to a bail supervisor by phone. He told her that he knew about the September 14 arrest warrant and would report as directed the following week. He also confirmed his phone number and address.
- [15] Mr. Alexander did not, however, report to a bail supervisor the following week. Rather, he ceased reporting until his arrest almost ten months later.
- [16] On October 5, 2022, a bail supervisor tried to contact Mr. Alexander by phone, but there was no answer. She did not leave a voice message because the automated system stated that the voicemail had not been initialized. The bail supervisor therefore asked the Nanaimo RCMP to conduct a curfew check at Mr. Alexander's address.
- [17] On October 27, 2022, the bail supervisor again tried to contact Mr. Alexander by phone, and again there was no answer. As before, she was unable to leave a voice message.
- [18] On October 28, 2022, the Nanaimo RCMP asked the bail supervisor to alert them if Mr. Alexander re-established contact with her office. The RCMP also told her that Mr. Alexander was no longer residing at the address he provided on September 1. I infer, and Mr. Alexander does not dispute, that an RCMP officer obtained this information by speaking to someone on visiting that address.
- [19] On November 2, 2022, the bail supervisor submitted a warrant application regarding Mr. Alexander's failure to report as required by the release order.
- [20] On November 29, 2022, a warrant was issued for Mr. Alexander's arrest for breaching the release order between September 16 and November 15, 2022.
- [21] On December 15, 2022, the RCMP issued a news bulletin asking for the public's help in finding Mr. Alexander. The bulletin contained identifying information including his picture. It stated that Mr. Alexander was wanted for breaching release conditions, was involved in criminal activity in Nanaimo, and was part of several ongoing investigations in Nanaimo. The bulletin asked that anyone with information regarding his whereabouts call the Nanaimo or Port Alberni RCMP.

- [22] On December 16 and 17, 2022, the police received three tips regarding possible sightings of Mr. Alexander, one in Sidney, another in Courtney, and the final one on the ferry to Departure Bay. Police patrols in response to the first tip did not locate Mr. Alexander. No patrols were conducted for the other two tips because a substantial amount of time had passed since the purported sightings.
- [23] On December 22, 2022, Information 90508 was sworn charging Mr. Alexander with the four counts he seeks to have stayed on this s. 11(b) Charter application. On one of these counts, he was charged together with Ms. Blanchard. A subsequent Information 90508-2, sworn April 14, 2023, charged the two of them jointly on all four counts.
- [24] Also on December 22, 2022, a warrant "to immediately arrest" Mr. Alexander was issued in relation to these counts as necessary in the public interest under s. 512 of the Criminal Code, R.S.C. 1985, c. C-46.
- [25] On January 30, 2023, the Nanaimo probation office moved Mr. Alexander's Port Alberni file to "AWOL" status, and it was transferred to a senior probation officer for monitoring until Mr. Alexander was located.
- [26] On February 1, 2023, Mr. Alexander had a court appearance for the two provincial driving offences, which as noted above were set for disposition by guilty plea. The federal Crown filed an application to have the arrest warrant regarding Information 90508 executed at this appearance and to hold a judicial interim release hearing on that same day.
- [27] At this appearance, the federal Crown told the court that he had added Information 90508 and the Port Alberni file to the list. Defence counsel appearing for Mr. Alexander on the provincial driving offences had not previously known about Information 90508 or the charges contained in it. Defence counsel stated that he did not expect Mr. Alexander to attend, "but perhaps we could give him a few more minutes". Defence counsel later said that he did not have "much optimism" that Mr. Alexander would be present.
- [28] The provincial Crown asked for and obtained a bench warrant for Mr. Alexander's arrest because of his nonappearance. Later that day, another warrant was issued for his arrest on a charge of breaching an undertaking. The arrest warrant regarding Information 90508 remained unexecuted.
- [29] On March 8, 2023, Mr. Alexander failed to attend court as required for a preliminary inquiry on the Port Alberni charges, and a warrant was issued for his arrest. By this point, he appears to have been the subject of four unexecuted arrest warrants.
- [30] On April 11, 2023, Ms. Blanchard was brought to the court on a warrant in respect of Information 90508, and was subsequently released. She told the court that she had approached legal aid about retaining counsel, and agreed to pick up her disclosure from the Crown office. The matter was put over until May 2, 2023.

- [31] On May 30, 2023, Ms. Blanchard failed to attend court for an appearance on Information 90508, and a warrant was issued for her arrest.
- [32] On July 7, 2023, two Nanaimo RCMP officers engaged in another matter saw Mr. Alexander, who they knew, sitting in a chair eating cereal on the lawn of a residence. This was not the residence at which he had told the bail supervisor he was living. The officers knew that Mr. Alexander had several unendorsed arrest warrants. Mr. Alexander tried to flee but stopped when one of the officers commanded him to do so and shouted that he was under arrest.
- [33] Mr. Alexander was taken into custody on the four arrest warrants, and later that day appeared in court on Information 90508. He was remanded in custody to schedule a bail hearing on Information 90508, the Port Alberni charges, and a third set of charges involving drug and firearms offences allegedly committed in Nanaimo on June 14, 2022.
- [34] On August 4, 2023, Mr. Alexander was granted bail and the charges in Information 90508 were adjourned to September 5, 2023, for an initial appearance.
- [35] On September 5, 2023, Mr. Alexander's counsel was granted an adjournment to September 19 to review disclosure.
- [36] On September 19, 2023, Mr. Alexander elected to be tried before a Supreme Court justice, sitting without a jury, with a preliminary inquiry. The matter was adjourned to a judicial case manager on October 3, to set a two-hour preliminary inquiry.
- [37] On October 3, 2023, counsel for Mr. Alexander obtained a two-week adjournment with a waiver of delay.
- [38] On October 17, 2023, the preliminary inquiry was set for May 15, 2024.
- [39] On March 19, 2024, Mr. Alexander and the Crown confirmed the above-mentioned date for the preliminary inquiry.
- [40] On May 2, 2024, Ms. Blanchard was arrested on the warrant arising from her nonappearance the previous May, and appeared in court on Information 90508. She promptly retained counsel, but counsel was unable to proceed to the preliminary hearing set for May 15.
- [41] Therefore, on May 13, 2024, the Crown called the case ahead to apply to adjourn the preliminary inquiry so that the matter could proceed jointly with both Mr. Alexander and Ms. Blanchard.
- [42] In support of the adjournment application, the Crown explained the recent developments regarding Ms. Blanchard and her counsel. He sought an adjournment because Ms. Blanchard would otherwise be unable to participate in the scheduled preliminary inquiry, which would effectively create a severance. The Crown argued that running separate trials for the two co-accused was contrary to the interest of justice, given that: (a) they were jointly charged on all four counts, arising from a search of a house in which they were both present; and (b) not proceeding jointly would create the possibility of inconsistent verdicts,

and might result in each co-accused taking responsibility for the drugs at the other's trial under the protection of immunity.

- [43] Mr. Alexander did not oppose the adjournment, and the court granted it, essentially for the reasons provided by Crown counsel in his submissions. Mr. Alexander's bail was then varied, with the Crown's consent, to replace his house arrest with a curfew from 8:00 p.m. until 6:00 a.m.
- [44] The earliest date available for the preliminary inquiry was November 4, 2024, and the first date on which the Crown was available was November 13. The preliminary inquiry was thus held on this latter date, at which point Mr. Alexander and Ms. Blanchard were committed for trial. The matter was adjourned to November 18 to set a pretrial conference ("PTC") and trial dates.
- [45] The November 18, 2024 date was a registry appearance and therefore not recorded. As a result, no transcripts are available.
- [46] At a December 2, 2024 fix date appearance, counsel were still assessing trial time estimates, as earlier that day counsel for Mr. Alexander had advised the Crown of an intention to bring a s. 8 Charter application that would increase the amount of court time needed. The matter was adjourned to December 9 to permit counsel to discuss the amount of trial time needed and possible dates.
- [47] On December 9, 2024, Mr. Alexander's counsel provided a time estimate of three days for the s.8 Charter application followed by five days for the trial, whereas the Crown felt that ten days was necessary. The matter was adjourned to December 16, so that discussions could continue regarding time estimates.
- [48] On December 16, 2024, Mr. Alexander was back in custody and needed for a s. 530 language rights inquiry, but no spring order had been completed, so the matter was adjourned to December 19, the date already arranged for a PTC, to complete the s. 530 inquiry.
- [49] On December 19, 2024, Corrections Canada failed to produce Mr. Alexander, whether contrary to the spring order or because a spring order had mistakenly not been prepared. At this point, the s. 530 inquiry was the only issue holding up scheduling trial dates, and the matter was adjourned to the next fix date on January 6, 2025. The Crown also informed the court that Ms. Blanchard was in the alternative measures program, hence her counsel's non-attendance.
- [50] On January 6, 2025, counsel for Mr. Alexander stated that the potential unavailability of Crown witnesses meant that the first trial dates available for the Crown would result in the trial ending more than 30 months after the charges were laid, thus engaging the Jordan deadline. The matter was adjourned to January 13 to permit the Crown to determine whether conflicts with witness schedules could be avoided so as to permit earlier trial dates.

[51] Following this appearance, scheduling provided the parties with assize dates that would allow the trial to conclude before the 30-month deadline, but witness unavailability prevented the Crown from accepting these dates. Accordingly, on January 13, 2025, the currently scheduled trial dates were confirmed.

Legal Principles

[52] Section 11(b) of the Charter states that anyone charged with an offence has the right to be tried within a reasonable time.

[53] Jordan at para. 46 sets out the framework for assessing s. 11(b) claims, including temporal ceilings beyond which delay will be considered presumptively unreasonable. For trials in superior court, the presumptive ceiling is 30 months.

[54] In *R. v. R.S.*, 2023 BCCA 148 at para. 34, the Court of Appeal endorsed the following step-by-step summary of the Jordan framework for determining the length of delay, taken from *R. v. Coulter*, 2016 ONCA 704:

[34] Calculate the total delay, which is the period from the charge to the actual or anticipated end of trial (Jordan, at para. 47).

[35] Subtract defence delay from the total delay, which results in the "Net Delay" (Jordan, at para. 66).

[36] Compare the Net Delay to the presumptive ceiling (Jordan, at para. 66).

[37] If the Net Delay exceeds the presumptive ceiling, it is presumptively unreasonable. To rebut the presumption, the Crown must establish the presence of exceptional circumstances (Jordan, para. 47). If it cannot rebut the presumption, a stay will follow (Jordan, para. 47). In general, exceptional circumstances fall under two categories: discrete events and particularly complex cases (Jordan, para. 71).

[38] Subtract delay caused by discrete events from the Net Delay (leaving the "Remaining Delay") for the purpose of determining whether the presumptive ceiling has been reached (Jordan, para. 75).

[39] If the Remaining Delay exceeds the presumptive ceiling, the court must consider whether the case was particularly complex such that the time the case has taken is justified and the delay is reasonable (Jordan, at para. 80).

[40] If the Remaining Delay falls below the presumptive ceiling, the onus is on the defence to show that the delay is unreasonable (Jordan, para. 48).

[Emphasis in original]

[55] There are two types of defence delay: delay waived by the accused, and delay caused solely or directly by the accused: *R. v. J.S.H.*, 2024 BCSC 690 at para. 12.

- [56] Waiver must be clear and unequivocal, and requires full knowledge of the right and the effect of waiving it: Jordan at para. 61; J.S.H. at para. 13. In the context of s. 11(b), it is not the right itself that is waived but the inclusion of specific time periods in the determination of whether overall delay is unreasonable. Waiver may be express or implied, but mere silence or inaction, without more, is insufficient to establish waiver of delay: J.S.H. at para. 13.
- [57] Delay caused by defence conduct is deducted from total delay because the defence should not benefit from its own delay-causing action or inaction. The only deductible defence delay under this component is delay caused solely or directly by the accused person, flowing from defence action or inaction that is illegitimate in that it is not taken to respond to the charges. Examples include delay caused by frivolous applications or situations where the court and Crown are ready to proceed but the defence is not. But these are just examples, and it remains open to trial judges to find that other defence actions or inactions have caused delay so as to warrant a deduction. See J.S.H. at paras. 14-20; Jordan at paras. 63-65; R. v. Cody, 2017 SCC 31 at paras. 28-33.
- [58] Exceptional circumstances refer to circumstances that lie outside the Crown's control, in that: (a) they are reasonably unforeseen or reasonably unavoidable; and (b) Crown counsel cannot reasonably remedy the delays emanating from those circumstances once they arise: Jordan at para. 69.
- [59] The first part of this test does not impose a standard of perfection on the Crown. Mistakes happen, and can lead to exceptional and reasonably unavoidable delay that should be deducted for the purpose of s. 11(b). Nonetheless, to meet the second part of the test the Crown must demonstrate that it took reasonable steps to avoid and address delay before it exceeded the relevant ceiling. In assessing the Crown's conduct, what counts is its effort and initiative, not its success. See Cody at para. 58; R. v. Basran, 2023 BCSC 415 at para. 35.
- [60] The two categories of exceptional circumstances are discrete events (e.g., illness or an unexpected event at trial) and particularly complex cases: Jordan at paras. 71-81.
- [61] Even if the delay does not exceed the ceiling, the accused can still show the delay is unreasonable: Jordan at paras. 82-91; J.S.H. at para. 10. However, Mr. Alexander is not relying on this route in asserting that his s. 11(b) right is breached.

Analysis

- [62] After deducting the 14 days from October 3 to 17, 2023--for which Mr. Alexander expressly waived delay--the delay between laying the charges in Information 90508 and the anticipated end of the trial is 31 months and 23 days.

[63] The question becomes whether further periods of time should be deducted, as contended by the Crown, referable to: (a) the roughly six months that passed between laying the charges and Mr. Alexander's arrest; and (b) the additional six months' delay occasioned by the adjournment of his preliminary inquiry, because Ms. Blanchard's counsel was unavailable, so that the two of them could be tried jointly.

Delay Between Laying Charges and Arrest (6 months and 15 days)

[64] The Jordan clock starts ticking from the date of the charge, not the date of the arrest: *R. v. Virk*, 2021 BCCA 58 at paras. 31-35; *R. v. Allison*, 2022 ONCA 329 at para. 43.

[65] There are generally two ways in which delay between charge and arrest can be deducted from the passage of time in calculating whether the presumptive deadline in *Jordan* has been exceeded.

[66] First, the delay will be categorized as defence delay where the accused has gone into hiding or is actively evading arrest, because this conduct is not taken to respond to the charges but rather is intended to frustrate them, and is therefore illegitimate: see, e.g., *R. v. Burke*, 2018 ONCA 594 at paras. 8-12; *R. v. Reid*, 2024 SKKB 77 at paras. 107-108; *R. v. Smith*, 2023 ONCJ 222 at para. 12.

[67] Second, the delay will be categorized as a discrete event if the Crown can establish that it or, more usually, the police, acted with reasonable diligence in attempting to locate the accused for the purpose of having them respond to the charge. Perfunctory efforts, such as simply obtaining an arrest warrant and posting it on CPIC, will usually fall short of meeting this threshold. See, e.g., *Virk* at para. 35; *Reid* at paras. 107-108; *R. v. Chan*, 2008 BCPC 95 at para. 42; *R. v. Folkes*, 2024 ONCJ 506 at paras. 25-28; *Smith* at paras. 24-26; *R. v. M.A.*, 2023 ONCJ 113 at paras. 33-35.

[68] I will now address whether either of these analytical options applies to justify calculating the period of delay without including the passage of time between laying the charges on December 22, 2022 and Mr. Alexander's arrest on July 7, 2023.

[69] The Crown asserts that this time period should be categorized as defence delay because Mr. Alexander was avoiding contact with: (a) the court, by failing to appear for court proceedings regarding his provincial driving offences and the Port Alberni charges on February 1 and March 8, 2023; and (b) his bail supervisor, by failing to report as required on the Port Alberni release order after September 16, 2022. Mr. Alexander was a fugitive from justice, says the Crown, and although he did not fail to appear or report with respect to Information 90508, the inevitable consequence was to delay that matter from proceeding.

[70] I am unable to accept this argument, because on the evidence I cannot find that during the period in question Mr. Alexander knew he was charged with the counts in Information 90508.

- [71] I am not to prepared to draw this inference simply because on August 2, 2022 Mr. Alexander was present when police searched the residence and located the controlled substances that, over four months later, led to the charges in Information 90508.
- [72] I also note that a person who is unaware of charges against them has no obligation to contact the police or courts to see if they might be charged with a criminal offence: Chan at para. 43; Smith at para. 12.
- [73] In this respect, R. v. Lenard, 2024 ONSC 4733 at paras. 15-17 holds that, at a minimum, there must be a finding that the accused knew about a charge before a court can conclude that their conduct constituted defence delay in relation to that charge because they were attempting to evade arrest. See also Chan at para. 36, stating that, "[i]t is what the person does after being notified of the charges that would make them a fugitive".
- [74] Although Lenard and Chan are not binding on me, I find their reasoning persuasive in the circumstances of this case. I leave for another day whether defence delay can be established where a court concludes, which I have not respecting Mr. Alexander, that the accused has taken evasive action to avoid the prospect of answering charges they expect may well be laid in the future.
- [75] The Crown argues that following Lenard in this case will unfairly reward Mr. Alexander for his conduct in failing to comply with court orders in his other criminal matters.
- [76] I do not accept this argument for two reasons.
- [77] First, Mr. Alexander's conduct in those other cases may well constitute defence delay with respect to those charges, and he may also be subject to prosecution for failing to attend court or report to his bail supervisor.
- [78] Second, my conclusion that Mr. Alexander's conduct does not amount to defence delay because he was unaware of the charges will not allow him to benefit from this conduct vis-à-vis Information 90508 if, as explained above, the Crown can show that it and/or the police took reasonable steps to find him.
- [79] This brings me to consider whether the passage of time between charge and arrest amounts to a discrete event, within the meaning of Jordan, because the Crown and/or police exercised reasonable diligence in attempting to locate Mr. Alexander for the purpose of compelling him to answer the charges he now seeks to stay under s. 11(b).
- [80] In my view, the Crown has not established that reasonable diligence was exercised in this regard.
- [81] Importantly, the efforts undertaken by the police as disclosed by the evidence were not sufficiently thorough.

- [82] At some undisclosed time between October 5 and 28, 2022, the police checked the residence at which Mr. Alexander had informed his bail supervisor he was living. But I have no evidence indicating: (a) to whom the police spoke or what they were told during this check; or (b) whether the information received provided any leads as to how Mr. Alexander might be found.
- [83] And while the police issued a news bulletin on December 15, 2022, and followed up on a few leads obtained as a result, there is no evidence they took any other steps to find Mr. Alexander prior to the laying of charges and issuance of the arrest warrant on December 22, 2022.
- [84] It may be that the police did in fact make other efforts to locate Mr. Alexander before releasing the news bulletin. To list a few examples, perhaps the police: (a) tried to call him at the phone number he had given his bail supervisor; (b) reviewed internal and public databases to obtain and follow up on contact information such as addresses and phone numbers; (c) made inquiries with family members, employers or known associates of Mr. Alexander; or (d) attended at locations he was known to frequent.
- [85] But no evidence of any such efforts was put before me on this application. Indeed, an affidavit sworn by a police officer outlining steps taken to locate Mr. Alexander did not mention the police check on his residence in October 2022 - I only obtained that information from an affidavit sworn by a bail supervisor at Nanaimo Community Corrections.
- [86] There is also no evidence to suggest the police took a single step to locate Mr. Alexander after the charges were laid and the arrest warrant issued. I therefore conclude that the only post-charge effort by police to find Mr. Alexander was to post the arrest warrant to CPIC.
- [87] The Crown was proactive in attempting to bring Mr. Alexander before the court on these charges after they were laid, by applying to have them addressed at Mr. Alexander's court appearance for the provincial driving offences on February 1, 2023. But this is the only post-charge effort to do so. Even viewed together with the pre-charge efforts by police to find Mr. Alexander, I am not prepared to conclude that reasonable steps were taken to justify deducting anything close to the roughly six-and-a-half months that the Crown seeks to categorize as a discrete event.
- [88] In his reply submission, Mr. Alexander's counsel quite fairly volunteered that the Crown's effort on February 1, 2023 was a concrete step taken to move the file forward, which could perhaps justify deducting two or three weeks of delay in calculating the time between laying the charges and the trial's anticipated end. I need not decide whether to accept this submission, because even were I to deduct the entire period from December 22, 2022 to February 1, 2023 as a discrete event, that deduction would not be enough to lower the remaining delay to below the 30-month deadline for presumptive unreasonableness.

[89] As a final point, there may be circumstances where reasonable diligence by police in trying to locate an accused before charges are laid and an arrest warrant issued permits the deduction of some period time in the post-charge period. However, I need not decide this issue in the case before me because, even viewed together with the Crown's proactive conduct on February 1, 2023, the police efforts as indicated in the evidence--a single check on Mr. Alexander's residence two months prior to charges being laid and a news bulletin seeking public assistance in finding him a week or so before--fall short of meeting the reasonable diligence threshold.

Delay Caused by Adjournment of Preliminary Inquiry (5 months and 29 days)

[90] The parties agree that the law governing whether and how proceeding jointly against two or more co-accused impacts the Jordan analysis is set out in *R. v. Gopie*, 2017 ONCA 728 at paras. 123-142, 167-176; and *R. v. Tran*, 2023 ONCA 532 at paras. 33-47. In particular, they directed me to *Tran* at para. 40, which states that delay caused to the accused by the conduct of a joint trial can qualify as an exceptional circumstance that permits delay above the 30-month ceiling where the Crown establishes that:

- (a) the joint trial is being undertaken in the interests of justice;
- (b) the delay has arisen because of the joint trial;
- (c) the delay is unforeseen or reasonably unavoidable; and
- (d) the Crown could not reasonably have ameliorated that delay.

[91] This articulation of the law is consistent with statements made by courts in this province: see, e.g., *R. v. Rai*, 2019 BCCA 377 at paras. 152-154; *R. v. Eheler*, 2021 BCCA 316 at paras. 71-74; *Basran* at paras. 47-53, 77; *R. v. Cade, Ceal, and Whaling*, 2022 BCSC 2292 at paras. 15-20, 34-39.

[92] In this case, Mr. Alexander argues that the Crown should not have applied to adjourn the preliminary inquiry. However, in oral submissions his counsel conceded that:

- (a) at the time the adjournment application was made, there was still over a year before the 30-month deadline would be reached and, as a result, "there was some sense" behind the Crown making the application, and it would have been difficult to successfully argue that the adjournment was not in the interests of justice;
- (b) Mr. Alexander did not oppose the adjournment application, complain of delay or seek severance (with respect to which, see *Rai* at para. 162, suggesting that such inaction may help to support a finding of exceptional circumstances); and
- (c) his decision not to oppose the adjournment could be explained because "Jordan was not front and centre at that point given the amount of time still before the deadline", and also because the Crown was consenting to vary his bail to replace house arrest with a curfew.

- [93] In the circumstances of this case, I conclude that adjourning the preliminary inquiry to pursue a joint trial was in the interests of justice, including for the reasons provided by the Crown in making the application. Mr. Alexander and Ms. Blanchard had been found in the house together, there would be overlapping factual and legal issues at trial, and running separate trials would, quite apart from any extra cost and delay involved, create a risk of inconsistent verdicts.
- [94] The roughly six-month delay in obtaining a new preliminary inquiry date thus arose because of the Crown's reasonable decision to preserve a joint trial.
- [95] Furthermore, the need for the adjournment application arose unexpectedly on fairly short notice. Ms. Blanchard had only recently been arrested and retained counsel, who was not able to proceed on the scheduled preliminary inquiry date. Not adjourning that date would effectively amount to a severance.
- [96] The need for an adjournment application, and the resulting delay, was thus reasonably unforeseen, and also reasonably unavoidable if a joint trial was to be preserved.
- [97] Finally, I find that the Crown could not have reasonably ameliorated this delay.
- [98] In this respect, I do not accept Mr. Alexander's submission that the Crown should have provided for the contingency that Ms. Blanchard would be arrested, and thus brought back into the proceedings, by booking a backup preliminary inquiry date for a time two or three months after the May 15, 2024 date. Booking backup dates may make sense in exceptional circumstances, but this is not one of those cases, and doing so with any regularity would create significant knock-on delay in the criminal justice system as a whole. Nor is there any basis for me to conclude that the Crown could have taken steps to obtain the new preliminary inquiry date at a time materially earlier than the dates proffered by scheduling.
- [99] Plus, the cushion of time before the 30-month deadline would be reached meant that the prospect of an adjournment did not, at that point, raise a substantial concern that the case would be in real jeopardy of exceeding the Jordan deadline. This is not a case where: the file was obviously languishing because of the conduct of a co-accused; the Crown had failed to develop a concrete plan to minimize the resulting accumulating delay; and the point had been reached where the only way to reasonably do so was to give up on a joint trial and try the co-accused separately (Tran at para. 44; Gopie at para. 171).
- [100] I am also unpersuaded by Mr. Alexander's argument that, because Ms. Blanchard was ultimately dealt with through alternative measures, and will not be part of a joint trial with him, it cannot have been essential to the interests of justice that they be tried together.
- [101] There is no basis for me to conclude that the alternative measures option was at the time so likely an outcome that seeking an adjournment to pursue a joint trial was contrary to the interests of justice or otherwise unreasonable. In any event, I accept Crown counsel's submissions that the Crown could not have known then that Ms. Blanchard would end up not being jointly tried with Mr. Alexander. The mere fact that future events transpire that,

in hindsight, show that steps taken to preserve a joint trial were unnecessary--such as a co-accused deciding to plead guilty--does not render those steps unreasonable or prevent the Crown from relying on them to establish exceptional circumstances under Jordan.

[102] Nor do I accept Mr. Alexander's argument that the Crown was complacent in the face of delay because it could have acted to speed up the process in January 2025, once it became clear that Crown witnesses were unable to attend on the only trial dates available prior to 30 months after the charges were laid.

[103] I fail to see what the Crown could have done at this point to ensure the trial was completed before the 30-month deadline had passed. It is not suggested that the unavailable witnesses were unnecessary to the Crown case or could have been replaced by an agreed statement of facts. Nor is there any basis for me to find that the Crown had some avenue available to it that could have elided the problem by turning up materially earlier dates, not initially offered by scheduling, for which its witnesses would have been available.

[104] I therefore find that the Crown has established that the adjournment of Mr. Alexander's May 15, 2024 preliminary inquiry because of the unavailability of Ms. Blanchard's counsel is a discrete event that should be deducted from the total delay, which on my calculation leaves the remaining delay at just under 26 months, and in any event well under the 30-month presumptive deadline.

Conclusion

[105] After deducting the roughly six-month delay associated with the discrete event of adjourning Mr. Alexander's May 15, 2024 preliminary inquiry because Ms. Blanchard's counsel was unavailable, the remaining delay is under the 30-month presumptive deadline established in Jordan for trials held in superior court.

[106] Accordingly, Mr. Alexander has not established a breach of his right to be tried within a reasonable time as guaranteed by s. 11(b) of the Charter, and his application for a stay of proceedings on that basis is dismissed.

"D. Layton J."

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Prepared on 25 October 2026 · Esheria