

CANADA / JUDGMENT

R. v. Bateman

2025 BCSC 1780

COURT

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2025 BCSC 1780 R. v. Bateman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bateman,

2025 BCSC 1780

Date: 20250612

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Registry: Victoria

Rex

v.

Robert Bateman

Before: The Honourable Justice K. Wolfe

Oral Reasons for Judgment - Voir Dire on Accused's Application re: Sections 8, 9 and 24(2) of the Charter

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Place and Dates of Hearing:

Victoria, B.C.

June 9-11, 2025

Place and Date of Judgment:

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June 12, 2025

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- [1] These oral reasons for judgment have been edited for publication.
- [2] THE COURT: These are my oral reasons for judgment on a voir dire in a criminal prosecution. They have been prepared on an expedited basis in order to provide a prompt decision to the parties and to facilitate any next steps in the trial. Should either side order a transcript, or should I decide to publish these reasons, I reserve the right to edit for grammar, clarity, style and case citations or references, but the substance of my judgment will not change.

Introduction

- [3] The accused, Robert Bateman, is charged with one count of possession of a controlled substance, specifically cocaine, for purposes of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]. He has pled not guilty. At the commencement of his criminal trial on June 9, 2025, I declared a voir dire to address Mr. Bateman's Charter application, which primarily challenges the validity of a pat-down safety search conducted by police on the date of the alleged offence, February 18, 2023.
- [4] At its simplest, Mr. Bateman alleges the pat-down safety search violated his rights under s. 8 of the Charter, and because that search was unlawful, all subsequent steps, including the discovery of cocaine on Mr. Bateman's person, his arrest for possession of the cocaine, and the search incident to that arrest, were also unlawful and in breach of his ss. 8 and 9 Charter rights. Mr. Bateman therefore asks the Court to exclude all evidence obtained by police in the interactions on February 18, 2023, pursuant to s. 24(2) of the Charter.

- [5] On a Charter application, the accused bears the onus of persuading the Court on a balance of probabilities that their rights were infringed. However, where, as here, the application concerns a warrantless search, the law presumes that search to be unreasonable. Accordingly, the Crown must demonstrate, on a balance of probabilities, that the search was reasonable within the meaning of s. 8 of the Charter, namely, that the search was authorized by law, the law was reasonable and the search was carried out in a reasonable manner: *R. v. Tim*, 2022 SCC 12 at paras. 45-46. As set out below, the present case concerns the common law power of police to conduct a safety search incident to what Mr. Bateman admits was a lawful investigative detention.
- [6] The parties agree the issues on the voir dire are fairly narrow. As a result, rather than asking the Court to first rule on the alleged Charter violations before making submissions with respect s. 24(2), both parties made all of their submissions at the same time. This ruling addresses my decision on both issues.

Facts

- [7] In the early morning hours of February 18, 2023, Mr. Bateman was involved in an interaction with two members of the Victoria Police Department at his place of residence. The two officers, Constable Liam Gormican and Constable Justin Reed, both testified during the voir dire. Constable Gormican testified he has been a police officer since May 2021. Constable Reed testified he has been an officer for three and a half years, which puts his starting date in or around early 2022. The parties also agreed to a number of admissions, pursuant to s. 655 of the Criminal Code, R.S.C. 1985, c. C-46, relating to the date of the alleged offence, the jurisdiction and the proof of the substances seized by police. In addition, photographs taken by Cst. Reed of the seized substances were entered as exhibits on the voir dire.
- [8] On February 18, 2023, Cst. Gormican and Cst. Reed were on patrol duty together, in uniform and using a marked police vehicle. Both officers testified that when on patrol, officers respond to a wide variety of service calls; Cst. Reed added they also respond to direct requests from the public. Requests from police dispatch are relayed to patrol officers through their portable radios, which they wear and which are connected to an ear piece, as well as through the mobile data terminal (MDT) mounted in the police vehicle. Based on the officers' evidence on the voir dire, I understand that while the same basic information is relayed via both radio and the MDT, such as the type of service call and location, there can be differences in the specific details that are transmitted via radio versus on the MDT.
- [9] Constable Gormican was driving the police vehicle that night. While he was listening to the information being relayed by radio and his ear piece, as the driver, he was not reviewing the MDT. As the passenger, Cst. Reed was responsible for navigating and reviewing the MDT for more detailed information about any service calls, as well as relaying information from the MDT to Cst. Gormican. Around or shortly after 4:00 a.m., the officers received a priority request from dispatch to attend in relation to an abandoned or "dropped" 911 call in an area near Dallas Road in Victoria. Constable Gormican testified that when a 911 call is "dropped",

the emergency dispatch centre will ask that police be dispatched quickly to the location because it is not possible to determine why the call was dropped. Both officers testified that when referred to a 911 call, they do not hear the 911 call itself; instead, information about the call is relayed to them over the MDT and radio.

- [10] Constable Gormican testified that while en route to the area of the dropped call, dispatch relayed some further information about the dropped 911 call, indicating that in the background of the call, a male and female voice could be heard engaged in what was believed to be an argument. Constable Gormican testified he was not provided information about what the persons on the call had actually said. Constable Reed's evidence differed on this point. He testified police dispatch relayed that on the dropped call, a woman's voice could be heard saying something to the effect of "don't fucking touch me" twice. Both officers testified that, based on the further information about the 911 call, the nature or classification of the service call was changed from a dropped 911 call to a possible domestic dispute.
- [11] Both officers testified they have experience dealing with domestic dispute service calls. Constable Gormican estimated that from the time he was hired in May 2021 until February 18, 2023, he had probably attended 100 domestic disputes. Constable Reed testified that service calls for domestic disputes are very common, and that he would receive an average of two to three such calls in each four-day shift block. Both officers testified that, based on their experience, domestic dispute calls pose high risks to officers and to the public, and can escalate quickly and without warning. As a result, officers often have safety concerns and use various techniques, including separating the parties involved, to ensure everyone stays safe.
- [12] At some point while the officers were en route towards the location, dispatch relayed further information via the MDT that the cell phone that had made the dropped 911 call was registered to a "Robert Bateman", with a current listed address of the basement suite at [redacted] Battery Street. Constable Gormican testified that information was obtained by "pinging" the cell phone. Constable Reed testified that dispatch queried the phone number in the police records system, PRIME, and it came back registered to Mr. Bateman at the Battery Street address. To the extent there is a discrepancy between the officers' evidence on how the exact address was determined, I consider it minor and not material to the issues I must decide. However, Cst. Reed testified that dispatch also relayed further information that there was a no-contact order between Mr. Bateman and an individual named "Ambrosia" and also that Mr. Bateman had an extensive record in the police PRIME system. Constable Reed could not recall if this further information was relayed both on the MDT and on the radio, but believed he "most likely" picked it up by looking at the screen. Constable Gormican did not testify that these additional details were within his knowledge.
- [13] Constable Gormican testified the officers arrived at [redacted] Battery Street without having activated the emergency lights and sirens. He testified use of the lights and sirens is discretionary and given the early morning hour and the lack of any traffic, he did not

consider it necessary. Both officers testified that after exiting the police vehicle, they looked for a door to a suite. As there was no such door on the front of the building, they walked to the rear of the building and located a door to what appeared to be a suite. Both officers recalled there was a gate on the property; Cst. Reed did not recall if it was open or closed. The officers' evidence was consistent that there were lights on in the suite, and that the door was located down several concrete steps, with a small threshold area immediately outside the door and a slightly larger landing area at the top of the steps in the backyard.

- [14] Constable Gormican testified that as they approached the suite door in the rear, he could hear a male and a female apparently arguing, but he could not make out their words as the door and windows were closed. Constable Gormican testified there was a motion sensor light above the door, but the only other illumination came from inside the suite and it was otherwise quite dark in the area. Constable Reed testified that he did not hear anything from the suite as they approached, and does not recall any light other than that from inside the suite. He also said it was quite dark.
- [15] Constable Gormican testified that he knocked on the door to the suite and a male later identified as Mr. Bateman presented himself at the door, wearing jeans, a hoodie and no shoes. Both officers testified they identified themselves as members of the Victoria Police Department and advised that they were investigating a possible domestic dispute. Both officers testified that Mr. Bateman only opened the door part-way and stood in the threshold or gap of the door. Constable Gormican's evidence on cross was that due to Mr. Bateman's size and position in the doorway, he could not see past him into the suite. He did not recall if Cst. Reed was standing beside him or behind him. Constable Reed testified that he could partly see past Mr. Bateman into the suite, and could see a male and a female in what appeared to be a living area. He testified he believed they were having a conversation and there was no obvious violence, but he could not tell anything else about their status or well-being. Constable Gormican testified that Mr. Bateman seemed slightly confused and his responses appeared delayed, but he allowed that Mr. Bateman may have been surprised by the police attending. Constable Reed testified that Mr. Bateman was somewhat agitated when he answered the door.
- [16] Both officers testified that Cst. Gormican directed Mr. Bateman to step out of the suite. While Cst. Reed suggested the direction had to be repeated, there is no dispute that Mr. Bateman complied by exiting the suite and stepping up the few steps to the landing area. Constable Gormican testified that he looked at Mr. Bateman's hands as he exited the residence to confirm there was nothing in them. Once at the landing, both officers testified Cst. Gormican informed Mr. Bateman that because of their investigation of a possible domestic dispute, he would be conducting a "safety search" for weapons, which included a pat-down search of clothing. Constable Gormican testified that, at that time, his attention was focused on Mr. Bateman (who was in front of him) rather than on anyone else who might have been in the suite.

- [17] While there was some attempt by Mr. Bateman's counsel to suggest there had not in fact been a pat-down search, that proposition was not put directly to Cst. Gormican, contrary to the rule in *Browne v. Dunn*; *R. v. Podolski*, 2018 BCCA 96 at paras. 160-162. In any event, I am not persuaded it has any merit. However, I accept the officers' evidence differed slightly about how the pat-down search was conducted. Constable Gormican testified he began at Mr. Bateman's waist line and pockets. Constable Reed testified the pat-down search was "top down", arriving at Mr. Bateman's waist line. I am not persuaded that difference is material. Both officers testified that throughout this process, Mr. Bateman did not argue and was not confrontational; instead, he was generally calm and compliant.
- [18] Constable Gormican testified that in conducting the pat-down search, he felt what he believed were two cell phones in Mr. Bateman's jeans pockets, but he did not consider those to pose a risk so he did not proceed to investigate them further. He testified that he observed something of a bulge in the front central "kangaroo" pocket of Mr. Bateman's hoodie, and he patted a portion of the bulge. His evidence on the voir dire was that what he patted was "hard and firm", and that because he "truly believed" it was a weapon, he did not proceed to feel the whole thing or attempt to discern exactly what it was, but instead reached into the central pocket.
- [19] In direct examination, Cst. Gormican testified he believed he had felt the nub of some kind of collapsible baton which he had previously encountered in his job. In cross-examination, when pushed on how he could have believed that what he felt was a baton, Cst. Gormican explained that he only felt a part of the bulge. He conceded he did not ask Mr. Bateman what it was, explaining that he did not want Mr. Bateman to have the opportunity to reach for whatever it was. Cst. Gormican testified that, on feeling the hard exterior of part of the object, he reached into the pocket and pulled out what appeared to be a large quantity of cocaine in a plastic, ziplock bag. He described the substance as approximately three inches by three inches, and about two inches thick, and the colour and consistency of chalk.
- [20] Constable Reed testified that as Cst. Gormican was conducting the pat-down search of the front "kangaroo" pocket of Mr. Bateman's hoodie, Cst. Gormican advised that he felt something hard inside, and on that basis, reached in and pulled out the object. Constable Reed testified that he was able to see what Cst. Gormican extracted and that it was a "square-ish" substance in a plastic bag that appeared hard and packed together. From his experience, Cst. Reed testified it appeared to resemble cocaine.
- [21] After extracting the plastic bag with the white substance in it, Cst. Gormican testified that he believed it was cocaine (based on his previous observations of cocaine in the 900 block of Pandora Avenue in Victoria). Constable Gormican testified that since he knew the bag contained more than the legal limit for possession of a controlled substance for personal use under the CDSA, he placed Mr. Bateman under arrest for possession of a controlled substance. Both officers testified that Mr. Bateman was handcuffed and Cst. Gormican subsequently searched Mr. Bateman incident to the arrest. Constable Gormican testified he was looking for three things: weapons, escape tools and further evidence.

- [22] The officers' evidence differed with respect to the location of the search incident to the arrest, what was found and where it was found. Constable Gormican testified the search incident to arrest began in the backyard and was completed after he and Cst. Reed walked Mr. Bateman to the police vehicle. He testified to finding two cell phones and a small flip-style notebook with lined paper by reaching into Mr. Bateman's pockets and his immediate "area of control" around his waist. Constable Reed testified the search incident to the arrest was conducted at the vehicle and, after he consulted the notes on the exhibit documentation page, testified the cell phones, notebook, other suspected narcotics in pill form and \$550 in cash were all found in the same front hoodie pocket. The evidence of both officers was consistent that Mr. Bateman was placed in the secure caged area of the police vehicle and Cst. Gormican read him his Charter rights.
- [23] Both officers testified that as Cst. Gormican was finishing up with Mr. Bateman at the vehicle, Cst. Reed re-attended at the residence to continue the investigation into the possible domestic dispute within the residence. Constable Gormican subsequently joined Cst. Reed, and by that time, the officers' supervising officer had also arrived on scene. The officers both testified there were two other occupants in the suite and the officers were invited to enter. On speaking to each individual separately, the officers determined there was no domestic dispute and no evidence of a physical altercation or other criminal offence. As a result, they left the suite, returned to the police vehicle and transported Mr. Bateman back to the police station, where he was processed and released.
- [24] The officers' evidence was consistent that Cst. Reed was involved to some extent in the subsequent processing of the police exhibits, and both officers completed certain notes and paperwork regarding the incident relatively contemporaneous to it. While the specific documents were not put in evidence on the voir dire, both officers were asked questions about what they had recorded in their earlier documents, as compared to their evidence on the voir dire and in Cst. Gormican's case, at the preliminary inquiry. Those questions were focused on testing the reliability of the officers' evidence. I will address those issues in more detail below.

Analysis

- [25] Before setting out the applicable legal principles in respect of police responses to 911 calls and authority to conduct pat-down safety searches incident to an investigative detention, it is helpful first to outline what is not in issue on the present voir dire.
- [26] During submissions, counsel for Mr. Bateman conceded the following points:
- a) It was reasonable for the officers to attend at Mr. Bateman's residence in response to the dropped 911 call which subsequently became a service call about a possible domestic dispute. They had a duty to do so.

- b) Given the rationale for their attendance, it was also reasonable for the officers to ask Mr. Bateman to exit his residence, subjecting him to investigative detention. In other words, Mr. Bateman accepts that his investigative detention by police was lawful.
 - c) If this Court finds that the pat-down safety search was lawful, both in terms of the initial search and Cst. Gormican's extension of the search through reaching into the hoodie pocket, then Mr. Bateman's further Charter arguments fail. This is because the discovery of the cocaine provides a valid basis for the subsequent arrest and search incident to arrest. For clarity, there is no independent Charter challenge to the subsequent steps; Mr. Bateman's challenge is wholly dependent on finding a violation at the safety search stage.
- [27] Given those reasonable concessions, the focus of my analysis is necessarily on whether the initial pat-down safety search was lawful, and if so, whether Cst. Gormican exceeded the permitted scope of that search by reaching into Mr. Bateman's hoodie pocket.

The applicable legal principles

- [28] Unlike in certain other cases to which I was referred, the pat-down safety search at issue on this application flowed from the officers' dispatched response to a dropped 911 call. In *R. v. Godoy*, [1999] 1 S.C.R. 311, 1999 CanLII 709 (SCC), the Supreme Court of Canada addressed the scope of police officers' obligations to respond to and investigate 911 calls, including dropped or disconnected calls. Noting that the common law duties of police include "preservation of the peace, the prevention of crime, and the protection of life and property" (*Godoy* at para. 15, citing *Dedman v. The Queen*, [1985] 2 S.C.R. 2), the Court held:
- [16] A 911 call is a distress call - a cry for help. It may indeed be precipitated by criminal events, but criminal activity is not a prerequisite for assistance. The point of the 911 emergency response system is to provide whatever assistance is required under the circumstances of the call. In the context of a disconnected 911 call, the nature of the distress is unknown. However, in my view, it is reasonable, indeed imperative, that the police assume that the caller is in some distress and requires immediate assistance. The police duty to protect life is therefore engaged whenever it can be inferred that the 911 caller is or may be in some distress, including cases where the call is disconnected before the nature of the emergency can be determined.

[Emphasis added.]

- [29] Acknowledging that a response to a 911 call might necessitate some interference with a person's individual liberty or privacy interests (in *Godoy*, it was interference with the privacy interests in a residence), the Court held that those interests need to be balanced against the interests of a potential victim. The Court accepted that police should not simply take the word of the person who answers the door that there is no problem without undertaking further investigation, particularly where the 911 call was disconnected: *Godoy* at paras. 19-21. The Court concluded that the common law police duty to protect life in the context of a dropped 911 call authorizes reasonable interference with a person's privacy and liberty as

such interference falls within the scope of the police duty and does not involve an unjustifiable use of its associated powers: *Godoy* at paras. 22, 29.

- [30] The essential elements of the law with respect to pat-down safety searches incident to investigative detention were summarized recently in *Tim* as follows:
- [53] This Court in [*R. v. Mann*, 2004 SCC 52] recognized that the police have a common law power to search incident to investigative detention under certain circumstances. Speaking for the majority, Iacobucci J. stated that "police officers may detain an individual for investigative purposes if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that such a detention is necessary" (para. 45). He added that a police officer "may engage in a protective pat-down search of the detained individual" when the officer "has reasonable grounds to believe that his or her safety or that of others is at risk" (para. 45). In addition, both the investigative detention and the pat-down search "must be conducted in a reasonable manner" (para. 45; see also *R. v. Clayton*, 2007 SCC 32, [2007] 2 S.C.R. 725, at paras. 20 and 29-31).

[Emphasis added.]

- [31] In *R. v. Mann*, 2004 SCC 52, the majority of the Court held that the power to conduct a pat-down search incident to an investigative detention does not exist in all circumstances (at para. 40). The majority framed the power as existing where an officer has "reasonable grounds to believe that his or her safety or that of others is at risk" and where the search is reasonably necessary in light of the totality of the circumstances: *Mann* at para. 40; see also para. 45. The Court cautioned that such a search "cannot be justified on the basis of a vague or non-existent concern for safety, nor can the search be premised upon hunches or mere intuition": *Mann* at para. 40. Rather, an officer must "act on reasonable and specific inferences drawn from the known facts of the situation" and must be "confined in scope to an intrusion reasonably designed to locate weapons": *Mann* at para. 41.
- [32] In its subsequent decision in *R. v. Chehil*, 2013 SCC 49, the Court clarified that the threshold test for justifying a protective search incident to investigative detention is that of reasonable suspicion (para. 23 and footnote 1). Reasonable suspicion, like reasonable and probable grounds to believe, must be "grounded in objective facts", but it is a "lower standard, as it engages the reasonable possibility, rather than probability, of crime": *Chehil* at para. 27. It will not be sufficient if the suspicion held by police amounts merely to a "generalized" suspicion; there must be something more specific to the person and / or the circumstances at issue: *Chehil* at paras. 28-31. Reasonable suspicion must be assessed against the totality of the circumstances. The inquiry into an officer's grounds for reasonable suspicion must be grounded in common sense and practical, everyday experience, must not be assessed in isolation, and must consider both what police were aware of when the search was executed, and an officer's experience and training: *Chehil* at paras. 29, 34, 47. See also *R. v. Stairs*, 2022 SCC 11 at para. 68.

- [33] To the extent there was any residual confusion about whether the standard is reasonable suspicion or reasonable grounds to believe, it was clarified in British Columbia in *R. v. Webber*, 2019 BCCA 208. At para. 61 of *Webber*, the Court held the protective search power is "predicated on reasonable suspicion".
- [34] In *R. v. Dhillon*, 2023 BCCA 38, leave to appeal to the SCC ref'd 2023 CanLII 92311 (SCC), the B.C. Court of Appeal rejected the appellant's argument that *R. v. MacDonald*, 2014 SCC 3, had modified the reasonable suspicion test and established a requirement that there be an "imminent threat" in order to justify a pat-down safety search. Writing for the Court, Justice Skolrood, as he then was, concluded that "the law does not require an imminent threat in order for [a safety search] to be lawful", cautioning that incorporating such a requirement would be likely to create confusion, given the ordinary meaning of "imminent" implies a degree of immediacy: *Dhillon* at paras. 94, 100. Instead, the Court in *Dhillon* held:
- [101] Ultimately, the test for justifying a safety search incident to investigative detention must balance the privacy interests of the detained individual with the interests of the police officers in maintaining their safety and the safety of the public. That balance is maintained by permitting an officer to engage in a protective or safety pat-down search of a detained individual when the officer has reasonable grounds to suspect that there is a risk to their safety, or the safety of others, which would be addressed by an immediate search. The reasonable suspicion must be based on "objectively discernible facts", rather than on a hunch or vague concern for safety, and must be conducted in a reasonable and minimally intrusive manner: see *MacDonald* at paras. 72, 76.

[Emphasis added.]

- [35] I turn then to the application of these principles to the questions of whether the safety search was lawful, and if so, whether the specific search of Mr. Bateman's hoodie pocket went beyond the permissible scope of that search.

Was the safety search lawful?

- [36] As noted, Mr. Bateman admits he was subject to a lawful investigative detention arising from the officers' response to the dropped 911 call and possible domestic dispute. However, Mr. Bateman says Cst. Gormican's decision to conduct a pat-down safety search was not lawful. He says the Crown has not established Cst. Gormican had a reasonable suspicion of a risk to safety in the circumstances.
- [37] In this regard, Mr. Bateman says the officers conceded he was cooperative and compliant throughout, not displaying any behaviours that would give rise to specific safety concerns. He says the officers lacked concrete information about the situation they were investigating and their generalized suspicion about domestic disputes, while understandable, was not sufficient. He notes there was no suggestion from dispatch that there were weapons involved and Cst. Gormican did not know the identity or gender of either the aggressor or the victim. Most significantly, Mr. Bateman says there are reasons to doubt the reliability of both

officers' evidence, given differences between their two testimonies and discrepancies between their viva voce evidence and their more contemporaneous notes and statements.

- [38] The Crown says, when the circumstances are viewed in totality, Cst. Gormican did have the requisite reasonable suspicion, in the sense of a subjective belief in a risk to safety, based on objectively reasonable factors. The Crown notes the officers were urgently dispatched to a dropped 911 call that was reclassified as a domestic dispute. They had information the dropped call came from Mr. Bateman's phone, which was registered to the address they attended. Constable Gormican was aware the dropped call involved a male and a female voice that seemed to be arguing. In the circumstances, further investigation was required.
- [39] The Crown says, upon arrival, the officers advised of the reason for their attendance and followed police training by directing Mr. Bateman to exit the suite (thus creating separation from any possible other occupants), but that alone was not sufficient to address the risks. Before proceeding to investigate the suite, Cst. Gormican informed Mr. Bateman he would be conducting a safety search for weapons. Given the uncertainties of the situation, and his experience with previous domestic dispute service calls, Cst. Gormican testified to his subjective concerns for his own safety, that of his partner, Cst. Reed, and any other occupants. He also testified to his belief that to ensure everyone's safety, it was necessary to treat everyone as a possible risk until they had been cleared. Accordingly, Crown says there was a sufficient basis for the reasonable suspicion necessary to conduct the pat-down safety search.
- [40] As Justice Sharma held in *R. v. Castle*, 2022 BCSC 1292, the inquiry into whether there was a reasonable suspicion of a risk to safety is done through the lens of a reasonable person standing in the shoes of a police officer in light of their training and experience: *Castle* at para. 53, citing *Webber* at paras. 62 and 64.
- [41] Applying that lens to the facts before me, I accept that Cst. Gormican's knowledge about the service call was not identical to that of Cst. Reed (whose testimony suggested he received more specific details about the situation and Mr. Bateman's background). Constable Gormican was the officer who made the decision to conduct a safety search. Accordingly, the question is whether what Cst. Gormican knew, in light of his training and experience, supports a subjectively held belief, based on objectively reasonable facts, that there was a reasonable possibility Mr. Bateman posed a risk to officer safety or the safety of the public. In my view, the following factors gave rise to a reasonable suspicion of a safety risk, justifying the initial pat-down safety search:
- a) First, Cst. Gormican was dispatched, with Cst. Reed, to an urgent, priority service call that was initially classified as a dropped 911 call. This engages the officer's duty to protect life, which authorizes reasonable interference with a person's liberty if required to complete the investigation. The information about the situation they were responding to was minimal.

- b) Second, Cst. Gormican knew the service call was reclassified to a possible domestic dispute, after dispatch advised that in the background of the dropped call, a male and a female voice appeared to be arguing. The reasonable inference that could be drawn was that the officers would likely be dealing with more than one person when they attended the call.
- c) Third, Cst. Gormican was aware, from his previous experience and training, that domestic disputes are volatile situations which can change and escalate quickly and without warning, and one of the ways to prevent further risk of harm is to separate parties. He also knew, from previous safety searches he had conducted on domestic dispute calls, that weapons (including concealed weapons) are often found in such situations. These are not hunches or generalized suspicions, but rather concerns based on facts arising from Cst. Gormican's previous direct experience.
- d) Fourth, with respect to his reasons for having decided to conduct the pat-down search, Cst. Gormican testified his decision was based on the nature of the call as a possible domestic dispute, the fact that such calls pose a high likelihood that harm has already been done to a person or could be done to police officers, and his belief that he had reasonable grounds to conduct the search based on the following objective factors:
 - (1) the abandoned 911 call;
 - (2) the information received that a male and a female voice were heard apparently arguing in the background of the call; and
 - (3) the officers were responding to a possible domestic dispute, which is a type of call that poses high risks.

Constable Gormican testified that his purpose in conducting the safety search was to look for weapons that might pose a risk to his safety, to Cst. Reed or anyone else in the suite, but admitted that when he decided to conduct the safety search, he did not know how many people were in the suite.

[42] I accept that Cst. Gormican did not know who the aggressor was, or their gender, and, unlike Cst. Reed, did not know who the possible victim was, or their gender. I also accept that Cst. Gormican did not have any positive information that there was a weapon, but given the circumstances of a dropped 911 call, there was equally no confirmation that a weapon was not involved. Based on Cst. Gormican's previous experience, I find his subjective concern that there was a possibility weapons could be involved was based on objectively reasonable facts.

[43] Contrary to Mr. Bateman's submission, in my view, the level of uncertainty about the situation, and the lack of information about the specifics of who was involved and in what role, would reasonably serve to heighten, rather than decrease, the officer's subjective concerns for safety. Constable Gormican testified to his subjective beliefs in this regard, noting that since he and Cst. Reed "had little to no information" about what had happened, "that heightened our concerns about what we might be facing." He testified that in unknown

circumstances, everyone that the police come across could pose a risk; given the uncertainties on February 18, 2023, he considered it prudent to treat everyone as a possible safety concern until he had been satisfied otherwise.

- [44] With respect to whether Mr. Bateman's calm demeanour and compliance is inconsistent with Cst. Gormican's subjective belief that there was a reasonable possibility he could present a safety risk, similar arguments were rejected by this Court in *Castle* and in *R. v. Bassi*, 2019 BCSC 1224, and by the Court of Appeal in *R. v. Patrick*, 2017 BCCA 57. In *Bassi*, Justice Brundrett held, at para. 76, that Mann does not require an overt indication of violence before a protective safety search may be undertaken, and concluded that:
- [77] if the police reasonably suspect that there is a risk to their safety, they are entitled to take minimally intrusive steps to proactively ensure their interim safety rather than only being reactive once violent behaviour has erupted. Placing undue emphasis on a lack of aggression in the analysis is inconsistent with the rationale underlying the power to search incident to an investigative detention being the prevention of avoidable harm: *Patrick* at paras. 71-72; *R. v. Willis*, 2003 MBCA 54 at para. 33-38.

[Emphasis added].

- [45] As the Court found at paras. 75 and 78 of *Castle*, the lack of aggressive or confrontational behaviour on the part of Mr. Bateman cannot negate or diminish the reasonableness of Cst. Gormican's suspicions, based on his knowledge and experience.
- [46] I acknowledge there were some inconsistencies between the testimony of Cst. Gormican and Cst. Reed in respect of the objectively discernable facts. They fall into five main categories: 1) whether dispatch relayed specific words from the dropped 911 call; 2) whether voices could be heard in the residence when the officers approached the door to the suite; 3) what the lighting conditions were; 4) the location of the search incident to the arrest; and 5) where the items were found.
- [47] Since the focus is on what Cst. Gormican knew at the time he decided to conduct the safety search, the location of the search incident to the arrest is not relevant, nor is the location where the objects were found. On the latter point, I note Cst. Reed was not conducting the search; he was only assisting and receiving the items, so I find Cst. Gormican's evidence on this point, as the searcher, more reliable. With respect to the words on the call, Cst. Gormican's evidence was consistent that he did not receive information about what was said, so even if Cst. Reed received different information (perhaps through reading the MDT), that information did not inform the basis for Cst. Gormican's decision. With respect to voices from the suite, I agree with Crown that the presence or absence of voices in the suite could only have minimally elevated safety concerns given that dispatch had already relayed information about voices arguing. Finally, with respect to lighting, both officers' evidence was consistent that at the location where the pat-down search was conducted, the lighting was minimal.

- [48] I do not consider any of those inconsistencies to materially affect the reliability of Cst. Gormican's evidence about his subjective belief and the objectively discernable facts that supported his reasonable suspicion of a safety risk. I note that reliability, like credibility, is not an all or nothing proposition. I find Cst. Gormican provided detailed evidence regarding why he had safety concerns, which was based on the facts known to him about the situation as well as his experience and training. I am mindful the Court of Appeal has cautioned that courts should "be reluctant to second guess an officer's testimony as to his or her honest belief in the need for a protective safety search where he or she can articulate reasonably clear and focused reasons that inform their risk assessment. This is particularly so where the objective grounds for the search closely mirror those factors that informed the officer's subjective belief": *R. v. Crocker*, 2009 BCCA 388 at para. 71, quoted with approval in *Webber* at para. 48. Those comments are apt here.
- [49] For all of the foregoing reasons, I find the Crown has established that Cst. Gormican had a reasonable suspicion that Mr. Bateman could pose a risk to officer and public safety, sufficient to justify the lawfulness of the initial pat-down search.

Did Cst. Gormican exceed the scope of the search by reaching into the hoodie pocket?

- [50] Mr. Bateman submits that even if the initial pat-down search was lawful, the decision to reach into the hoodie pocket and extract the bag after feeling the object exceeded the lawful scope of the safety search and violated Mr. Bateman's s. 8 Charter rights. Mr. Bateman's main arguments in this regard focus on his assertion that it was unreasonable for Cst. Gormican to conclude, based on feeling the cocaine through the hoodie pocket, that it was or could be a weapon. He cites discrepancies in Cst. Gormican's description of the object between his contemporaneous notes and his testimony at the preliminary inquiry and on the voir dire. He also points to the police exhibit photographs and Cst. Reed's testimony regarding how the cocaine was handled during processing as evidence that the cocaine was powdery, soft and prone to breaking apart, rather than "hard and firm".
- [51] For its part, the Crown says safety searches need not always be confined to pat-downs of the accused person, and can, in appropriate circumstances, extend to searches of pockets or even surrounding areas, such as the centre console in a vehicle. The Crown acknowledges there were discrepancies between Cst. Gormican's descriptions and his notes and typed statement, but submits they have been explained and in any event, the requirement to take detailed, contemporaneous notes is not universal. Crown also emphasizes that Cst. Gormican was not required to be convinced on reasonable grounds that there was in fact a weapon in the hoodie pocket. Rather, the standard simply requires there to have been a reasonable possibility, based on subjective and objective factors, that it could have been a weapon.
- [52] Counsel for Mr. Bateman put to both officers in cross-examination that the cocaine depicted in the police exhibit photographs was in powdered form, rather than in a hard or compact form. Both officers conceded that there was some evidence of powdered cocaine in the

exhibit photographs, but did not admit that it was all in powder form or that the photographs failed to depict any hardness or firmness. Both officers conceded it was possible the cocaine, which they each described as initially being brick-like (Cst. Reed described it as a brick of "compressed powder"), may have changed shaped somewhat or broken apart a bit when it was removed from the packaging, despite the exhibit officer's best efforts to preserve it. I accept that Cst. Reed agreed on cross-examination that the exhibit officer handled the cocaine "gingerly" or "carefully", but it was not established that there was a need to handle the cocaine in that manner because it was "soft" or "powdery" in nature. Beyond what I have indicated, there was no specific evidence before the Court on this voir dire with respect to how cocaine reacts on being handled for processing. In the absence of that evidence or concessions on cross-examination that went as far as Mr. Bateman urged, I reject Mr. Bateman's assertion that I can find, based on what the photographs alone depict, that the cocaine found in Mr. Bateman's hoodie pocket was "vastly different" from the hard or firm object described by both officers in their viva voce testimony.

- [53] With respect to the rationale for reaching into the pocket, Cst. Gormican testified on direct and cross that he observed a bulge or protrusion in the pocket, that did not conform to the shape of Mr. Bateman's body, suggesting the presence of an object. I find the evidence was consistent that Cst. Gormican patted at least a portion of the bulge from the exterior of the pocket before reaching into the pocket.
- [54] I accept that there were differences between Cst. Gormican's written statement, which described the object as "large and bulky" and his testimony at the preliminary inquiry and on the voir dire that the object was "hard and firm". I also accept that there is a similar discrepancy in that, in his hand-written notes and statement, Cst. Gormican does not reference any concern that the object was a weapon or mention any particular kind of weapon, such as a baton, that the object might have been. In his viva voce testimony, he stated that he truly believed the portion of the object was a weapon, and that it felt like the "nub" of a baton.
- [55] Constable Gormican acknowledged that his description in his statement and notes was different than his evidence at the preliminary inquiry and on the voir dire. The Crown says this acknowledgment bolsters, rather than detracts from, his reliability. On the voir dire, he explained that in reviewing his previous typed statement, he did not consider it to have been well-written, so in reflecting on the incident before the preliminary inquiry, he was able to recall the events and therefore to provide a better, more specific description of what he had felt. Constable Gormican did not accept that his description of something as "large and bulky" was necessarily inconsistent with a potential weapon and resisted any suggestion that what he had felt was soft. His evidence was that if what he had felt was soft, he would not have reached into the pocket, because he would not have considered it to pose any safety risk to he and his fellow officer. He also testified that, despite dealing with many subsequent investigations, this particular file sticks out in his memory, including because of its significance, because of where he was in his policing career, and because it began as a

dropped 911 and possible domestic dispute and then morphed into a CDSA file.

- [56] With respect to the discrepancy in Cst. Gormican's evidence, counsel for Mr. Bateman relies on *R. v. Oyston*, 2019 BCSC 264, at paras. 46-49, for the proposition that accurate and detailed note-taking contemporaneous to the event is an "integral part of a successful investigation" and the "duty and responsibility" of a competent investigator. He submits the discrepancies between the contemporaneous notes and the viva voce testimony, particularly given the passage of time and frailties of memory, render Cst. Gormican's later testimony and descriptions of the object unreliable. However, in reply, the Crown submitted that while the Supreme Court of Canada has acknowledged, including in *R. v. Beaver*, 2022 SCC 54, a requirement to take notes in certain specific cases (like strip searches or computer searches), there is not a universal requirement to take notes for all warrantless arrests. Such a requirement, the Crown says, could impede on police ability to respond to the dynamic situations that police face every day. The Crown says the case of *Wood v. Schaeffer*, 2013 SCC 71, which was relied on in *Oyston*, arose in a completely different context about interpretation of a specific statutory requirement in Ontario legislation and the obligation to take notes in that context.
- [57] In my view, while there are some discrepancies in the actual words Cst. Gormican used, there is independent evidence that corroborates his subsequent testimony that the object was hard and firm. There is Cst. Reed's testimony that he heard Cst. Gormican state that he "felt something hard" or "firm" before extracting the bag of cocaine. There is Cst. Reed's description of the cocaine in the bag as being compressed and brick-like. And there is evidence in at least two of the police photographs suggesting that at least some of the cocaine was in more solid form. I therefore find Cst. Gormican's evidence that the object he felt was firm or hard to be reliable.
- [58] With respect to whether he was required to have subjectively believed it was a weapon, I accept the Crown's argument in reply that the standard of reasonable suspicion did not require Cst. Gormican to be satisfied that what he was feeling through the hoodie pockets was definitively a weapon. Instead, Cst. Gormican only needed to be satisfied, on a balance of probabilities, that it was more likely than not there could be a risk of a weapon. Mr. Bateman argued Cst. Gormican's evidence that what he felt could have been the nub of a baton was simply not believable, given the shape of the cocaine in the police exhibit photographs, and the usual length of a baton. However, Cst. Gormican's evidence on cross was that he did not feel the whole object, just the hard nub of it. This was why he was unable to give an estimate of the size of the object before he extracted it.
- [59] Constable Gormican testified that he was not concerned with trying to discern exactly what the object was, given the totality of the circumstances, namely, that he was feeling a part of an object through a sweater outside at 4:00 a.m. in minimal light. Instead, he testified he was concerned with officer and public safety in the context of a possible domestic dispute, and that the hardness of the object caused him concern that it could have been a weapon. I accept that explanation and, in light of the standard of reasonable suspicion, I accept it was

not necessary that Cst. Gormican was certain he was feeling a weapon or part of a weapon - it was sufficient that he believed, based on subjective and objective factors, that it could have been.

[60] In Castle, Sharma J. found the following at para. 124:

[124] I also note that cases after Mann have made it clear that the particular facts in Mann were important to the conclusion that reaching into a pocket, in that case, was a violation. Particularly, in R. v. Ellis, 2016 ONCA 598, the Ontario Court of Appeal said the following at para. 28:

[28] What the Supreme Court did not do in Mann was pronounce a general rule that a protective pat down search incident to an investigative detention can never extend to a search of the contents of pockets. Implicit in the court's holding was that, had the pat-down search revealed a safety concern, the officers would have been justified in extending the search to the accused's pockets. Indeed, there would be no point in conducting the pat-down search if, as suggested by the appellant, an officer cannot take further steps to protect his or her safety on having a reasonable basis for believing that there is a safety concern: [Citations omitted.]

[Emphasis added.]

[61] I find those comments are apt here. Having conducted a pat-down search, and as I have found, having felt something "hard" or "firm" in the front hoodie pocket, I find Cst. Gormican was justified in extending the search to the contents of Mr. Bateman's pocket.

[62] In the circumstances, I find that Cst. Gormican did not exceed the scope of a lawful pat-down search by extending the search into Mr. Bateman's hoodie pocket.

Conclusion on the safety search

[63] For the reasons set out above, I find, on a balance of probabilities, the Crown has established both that the initial pat-down safety search of Mr. Bateman was lawful and that Cst. Gormican did not exceed the scope of a lawful search by reaching into Mr. Bateman's hoodie pocket. Accordingly, I am satisfied on a balance of probabilities that there was no breach of Mr. Bateman's Charter rights on February 18, 2023.

Section 24(2)

[64] Given my conclusion that there was no breach of Mr. Bateman's Charter rights, it is unnecessary for me to consider whether the evidence should be excluded under s. 24(2) of the Charter, and I decline to do so.

Summary

[65] As a result, I dismiss Mr. Bateman's Charter application. That is my ruling.

"K. Wolfe J."

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