

CANADA / JUDGMENT

R. v. Garkouth, Ibrahim Hussein, and Obatusa

2025 BCSC 2403

COURT

Supreme Court of British Columbia

DECIDED

1 December 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 2403 R. v. Garkouth, Ibrahim Hussein, and Obatusa

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Garkouth, Ibrahim Hussein, and Obatusa,

2025 BCSC 2403

Date: 20251201

Docket: 37425

Registry: Vancouver

Rex

v.

Duoth Tehen Garkouth, Ramadhan Ibrahim Hussein, and

Sijuola Israel Obatusa

Before: The Honourable Mr Justice Crerar

Reasons for Judgment

Voir dire: application #9: warrantless collection of images from

Delta Green Cab

Counsel for the Crown:

D. J. Porte

M.E. LeHouiller

Counsel for R Ibrahim Hussein:

J. Hemmerling

Place and Date of Trial/Hearing:

Vancouver

November 25-26, 2025

December 1, 2025

Place and Date of Judgment:

Vancouver

December 1, 2025

I. Introduction

- [1] The accused Ramadhan Ibrahim Hussein seeks standing to bring a Charter s.8 challenge to the warrantless collection of still security camera images of himself sitting in the back seat of a taxi cab. He asserts that he had a reasonable expectation of privacy in his images, which were captured in circumstances that were more private than public.
- [2] The applicant is charged with breaking and entering a dwelling house, and kidnapping, contrary to ss.348(1) and 279(1) of the Criminal Code. Both offences arose from an alleged home invasion at St. Catherines Street near East 35th Avenue in Vancouver that started around 4 am on March 11, 2023.
- [3] The four male perpetrators encountered four residents, whom they restrained and bound. Two perpetrators drove the mother and two daughters away in a grey Acura MDX (the father's car): they were later abandoned in Richmond.
- [4] The other two perpetrators drove the father away in a white Acura TLX (the mother's car): the focus of the present application.
- [5] The Acura TLX travelled to Richmond, where one of the perpetrators and the father transferred to a Toyota Sienna: the father was later found in Surrey, having endured a beating and extortion attempts.
- [6] The Crown alleges that the applicant and another perpetrator remained in the Acura TLX. The Acura TLX then travelled to Surrey, then returned to the area of the kidnapping, and then headed southbound again, towards the Knight Street Bridge.
- [7] At approximately 5:51 a.m., the Acura TLX went through a police traffic stop on Knight Street, proceeding onto the Knight Street Bridge.

- [8] Shortly after, the Acura TLX was involved in a two-vehicle accident on the southbound lanes of the Alex Fraser Bridge near Delta. The occupants fled the accident before the police arrived.
- [9] A firearm was located on the pavement beside the Acura TLX. A police service dog tracked the perpetrators from the accident scene to a Petro-Pass gas station, located near the accident scene, at 10178 Nordel Court, Delta.
- [10] The Vancouver Police Department officers then canvassed cab companies. They learned that at 6:09 am, Delta Green Cabs had received a call requesting pickup at the Petro-Pass, from phone number 672-513-3283. Delta Green Cabs dispatched cab #D518, which was independently owned and operated by its driver. At 6:24 am the cab arrived at the Petro-Pass. Petro-Pass CCTV footage showed two males entering a green-coloured cab at 6:25 am. At 6:46 am the cab dropped them off at a 7-11 convenience store at 10416 King George Highway in Surrey: its CCTV footage shows two passengers departing a green cab. Those two passengers resembled the two individuals on the Petro-Pass CCTV.
- [11] The cab driver was able to provide some details about the ride and the two passengers' appearances. One of the passengers had provided the name "Tony". The passengers were not wearing masks. They paid in cash rather than by credit card.
- [12] During their ride, both passengers sat in the back seat. A two-lens camera mounted at the top of the front windshield, beside the rear view mirror, looked back towards the passengers, roughly at their eye level, a meter away. Each rear seat window had two round orange decals -- one on the inside and one on the outside, four in total - that stated, "YOU are ON CAMERA For SAFETY PURPOSES." The camera and decals would be readily visible to passengers entering the cab and then while sitting in the back seat.
- [13] Later that day, the police seized the cab to extract video surveillance footage. The police did not seek prior judicial authorizations for the search and seizure.
- [14] A third-party service provider extracted images from the cab camera. On March 13, 2023, the police used six images of the passenger on an "For Identification" poster, transmitted to police agencies throughout the province. Multiple responses to the poster identified the applicant as one of the passengers. The still images and the responses to the identification poster were then used for subsequent informations to obtain in the investigation.
- [15] Before proceeding, it is important to set out the parameters of the present evidence and application, in two manners.

- [16] First, while the cab camera captured moving images, and perhaps captured audio (it is not clear on the materials), the only relevant evidence for the purposes of the present application were six still black and white video images, akin to photographs. The evidence in question did not include any communications, through gestures or words. Nor is there any assertion that private or embarrassing or compromising or criminal acts were caught on camera. The still images are wholly neutral.
- [17] Second, the applicant only asserts a reasonable expectation of privacy in the images captured by the cab camera. While the police also seized the cab to preserve perishable evidence such as fingerprints and DNA, it is not clear to what extent those forms of evidence were gathered. In any case, those forms of evidence were not the subject of the present application, directly or peripherally, even though arguably fingerprint and certainty DNA evidence would be far more revelatory of private and personal biographical details than would a neutral still frame image of the applicant.

II. Law

- [18] Crown and defence generally agree on the applicable law.
- [19] In order to have standing to assert a Charter s.8 infringement, the applicant bears the onus of establishing, on a balance of probabilities, that he has a reasonable expectation of privacy in the subject matter of a search: *R. v. Campbell*, 2024 SCC 42 at para 39.
- [20] Recently, in *Campbell*, Justice Jamal set out the importance of the right to privacy in our democracy:
- [37] The right to privacy is foundational to a free and democratic society. It is essential to "individual dignity, autonomy, and personal growth" (*Bykovets*, at para. 29; see also *Plant*, at p. 292; *R. v. Jones*, 2017 SCC 60, [2017] 2 S.C.R. 696, at para. 38), and to "the relationship between the state and the citizen" (*R. v. Tessling*, 2004 SCC 67, [2004] 3 S.C.R. 432, at para. 12). In an oft-quoted passage in *R. v. Dymnt*, 1988 CanLII 10 (SCC), [1988] 2 S.C.R. 417, at pp. 427-28, La Forest J. wrote that "[t]he restraints imposed on government to pry into the lives of the citizen go to the essence of a democratic state." A similar sentiment was echoed by Binnie J. in *Tessling*, who observed that "[f]ew things are as important to our way of life as the amount of power allowed the police to invade the homes, privacy and even the bodily integrity of members of Canadian society without judicial authorization" (para. 13).
- [21] *Campbell* notes that the s.8 jurisprudence has sought to balance reasonable individual expectations of privacy with reasonable expectations of public protection through effective police investigations:
- [38] A central preoccupation of this Court's s. 8 jurisprudence has been to balance the often competing aims of personal privacy and the public interest. This quest for balance reflects the constitutional imperative in s. 8 itself, which, expressed negatively, protects against an unreasonable search and seizure or, expressed positively, safeguards only a reasonable expectation of privacy (*Hunter*, at p. 159). In *Hunter*, Dickson J., as he then was, explained

that s. 8 requires "an assessment . . . as to whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement" (pp. 159-60). In Tessling, Binnie J. added that "[t]he community wants privacy but it also insists on protection. Safety, security and the suppression of crime are legitimate countervailing concerns" (para. 17; see also Plant, at pp. 291-92).

- [22] Campbell confirms the recurrent jurisprudential theme that the primary purpose of s. 8 is "to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state": *R. v. Marakah*, 2017 SCC 59 at para. 31; Campbell at para 57.
- [23] As stated in *R. v. Craig*, 2016 BCCA 154 at paras 135-136, citing *R. v. Cole*, 2012 SCC 53 at para 46: "The more personal and confidential the information, the more willing reasonable and informed Canadians will be to recognize the existence of a constitutionally protected privacy interest." The Court placed emphasis on information that tends to reveal a person's "interests, likes and propensities"; and information that is "highly revealing and meaningful to [one's] personal life."
- [24] Campbell emphasises that the s.8 enquiry demands a normative, functional, and contextual analysis as to whether the evidence obtained in fact could reveal personal or biographical core information:
- [48] Whether there is a reasonable expectation of privacy "is not a purely factual inquiry"; the inquiry "is normative rather than simply descriptive" (Spencer, at para. 18; see also Tessling, at para. 42). Although the inquiry must be sensitive to the factual context, it is inevitably laden with value judgments about the sort of free and democratic society that reasonable and informed Canadians expect to live in, based on concerns about the long-term consequences of tolerating state intrusion into individual privacy (Spencer, at para. 18; Patrick, at para. 27; Bykovets, at para. 52; see also H. Stewart, "Normative Foundations for Reasonable Expectations of Privacy" (2011), 54 S.C.L.R. (2d) 335, at pp. 342-47; S. Penney, V. Rondinelli and J. Stribopoulos, *Criminal Procedure in Canada* (3rd ed. 2022), at ¶3.38).
- [49] The normative approach to s. 8 "demands we take a broad, functional approach to the subject matter of the search and that we focus on its potential to reveal personal or biographical core information" (Bykovets, at para. 7 (emphasis in original), citing *Marakah*, at para. 32; see also *R. v. Reeves*, 2018 SCC 56, [2018] 3 S.C.R. 531, at para. 28; Tessling, at para. 42; Spencer, at para. 18; Stewart, at pp. 335 and 342-43).
- [25] Thus the court must consider the totality of the circumstances in determining whether a reasonable expectation of privacy exists. The totality of the circumstances test is "one of substance, not of form": *Cole* at para. 40.

- [26] The jurisprudence (including *Cole*, para. 40; *Marakah* at para. 11; *R. v. Spencer*, 2014 SCC 43 at para. 18; *R. v. Patrick*, [2009] 1 SCR 579 at para 27; *R v. Tessling*, [2004] 3 SCR 432 at para. 32; and *Campbell* at para.39) sets out various factors to be considered in assessing whether a reasonable expectation of privacy exists:
- i. the subject matter of the alleged search;
 - ii. whether the claimant had a direct interest in the subject matter;
 - iii. whether the claimant had a subjective expectation of privacy in the subject matter; and
 - iv. whether the claimant's subjective expectation of privacy was objectively reasonable, having regard to the totality of the circumstances, which includes:
 - a) the place where the alleged "search" occurred; in particular, did the police trespass on the appellant's property and, if so, what is the impact of such a finding on the privacy analysis?
 - b) whether the informational content of the subject matter was in public view;
 - c) whether the informational content of the subject matter had been abandoned;
 - d) whether such information was already in the hands of third parties; if so, was it subject to an obligation of confidentiality?
 - e) whether the police technique was intrusive in relation to the privacy interest;
 - f) whether the use of this evidence gathering technique was itself objectively unreasonable;
 - g) whether the informational content exposed any intimate details of the appellant's lifestyle, or information of a biographic nature.
- [27] The accused will have standing to assert a s. 8 violation only if the answer to the second, third, and especially fourth inquiry is "yes": that the accused's subjective expectation of privacy was objectively reasonable.
- [28] The ultimate question is whether the information was personal and confidential information for which an objectively reasonable person in the position of the accused, apprised of the totality of the circumstances, would expect privacy.

III. Discussion and decision

- [29] The applicant argues that the totality of the circumstances indicates that he had a reasonable expectation of privacy protected by s.8. He and his co-passenger had exclusive use of the cab, and were obscured from outside viewing by tinted windows. The passengers took some care to obscure their identity, entering the cab quickly, using a pseudonym, and paying cash. The camera did not simply capture video stills, but linked the applicant to a telephone number, and to the Acura used in the kidnapping. Finally, the applicant notes that the only other case to consider similar facts concluded that that accused there had a s. 8 privacy interest in video stills of himself sitting in the front seat of a cab: *R. v. Groff*, (1 May

2023) Surrey File No. 243024 & 247610 (BCPC).

- [30] Despite Mr Hemmerling's forceful submissions, for the reasons that follow, I conclude that the applicant had no reasonable expectation of privacy in the images captured of him sitting in the back seat of the cab, a form of public transportation, with a third-party cab driver present throughout, and clear reminders, in the prominent decals and camera itself, that his image would be captured and preserved on video, which images could then be held and controlled and potentially disseminated to others by a third party, without any stated limitation, free of his input or control. Nor do those images, on their own, or combined with other information, reveal any core biographical or lifestyle details. Nor were such details the objective of the search.

A. The subject matter of the alleged search

- [31] The applicant argues that while on their own, images from cab CCTV would be near meaningless, the court must consider the inferences drawn from the images. The police were interested in the photos of the suspects to identify similarities in other CCTV footage, as well as links to geographical locations and phone numbers. The images led to a search for fingerprint and DNA evidence, and a link to the telephone and Acura. The applicant analogises to *R. v. Kang*, 2020 BCSC 1237 at paras 71 and 75 ("*Kang 1237*"), where the subject matter of the search was not simply the individual pieces of car rental agreement information but rather to obtain lifestyle information about where the accused was going and what he was doing.
- [32] In addressing the subject matter of an alleged search, a "broad and functional approach" is required, which looks "not only at the nature of the precise information sought, but also at the nature of the information that it reveals": *Spencer* at para. 26; *Marakah* at para. 15. Defining the subject matter of an alleged search is not limited to simply the actual information gathered by the state; it must be analyzed based upon what that information reveals in the specific contextual framework. As stated in *Spencer* at para. 31: "it is clear that the tendency of information sought to support inferences in relation to other personal information must be taken into account in characterizing the subject matter of the search." The Court's task is to determine "what the police were really after" as *Doherty JA* put it *R. v. Ward*, 2012 ONCA 660 at para. 67; *Marakah* at para 15, per *McLachlin CJ*.
- [33] In *R. v. Flintroy*, 2018 BCSC 1693 Justice J. Williams summarised the first enquiry:
- [16] With respect to the first, the subject matter of the search, a consideration will be whether this was personal information. The cases often make reference to whether the information constitutes a biographical core of personal information. Also relevant to the first factor is the tendency of the information to support other inferences. A useful inquiry has been stated as "why do the police want access to this information and what will they use it for?"

- [34] Applying the broad and functional approach, the first inquiry asks the nature of the precise information sought by the police at the time the search was conducted and what the information they received revealed at the time of the receipt. For example, as noted in *R. v. Kang-Brown*, 2008 SCC 18 at paras 173-74, the subject matter of a sniffer-dog search at an airport is not the airspace around a suitcase, but the contents of the suitcase: para 29. Similarly, as noted in *Marakah* at para 16, the subject matter of seizure of an iPhone is not the iPhone itself, but specific recovered text messages. Similarly, as recently noted in *R v Bykovets*, 2024 SCC 6 at para 41, police seeking IP address are not "really after" that string of meaningless numbers, but rather the internet search activities that the IP address reveals.
- [35] The enquiry does not concern, however, the police's subsequent uses of the information obtained in the overall investigation. As stated in *R v Truong*, 2021 ABQB 34, which found that the police sought CCTV footage not for long-term lifestyle surveillance, but rather for a timeline of the accused's movements and, to a limited extent, his association with others:
- [66] The fact that the police were able to interweave the information garnered from the CCTV with other facets of their investigation to produce a fuller picture of the accused's activity does not concomitantly increase the privacy interests of the information captured by the video alone.
- [36] In his argument, the applicant seeks to try to broaden the enquiry: the identification of the applicant in the cab connected him to the crashed Acura TLX, and hence to the telephone and firearm found in and beside that vehicle, and in turn back to the house whence the car was taken, along with the kidnapped father. None of the canvassed jurisprudence suggests that the court take such a broad enquiry, separated in time, geography, or concept from the search itself, into the subsequent or other uses to which the police make of the information obtained. Conceiving "what the police were really after" in such a broad manner, unconnected temporally, physically, or conceptually to the impugned search itself, would create an expectation of privacy in practically every step of any investigative process.
- [37] As stated by Associate Chief Justice Fairburn in *R. v. El-Azrak*, 2023 ONCA 440:
- [48] The subject matter of a search cannot be, as the appellant suggests, retroactively characterized according to what the information reveals after it has been combined with other investigative facts. If that were the analytical approach to determining the subject matter of a search, it would not be a stretch to suggest that virtually all information obtained by the police would ultimately result in privacy claims.
- [49] The whole nature of a police investigation is to thread together investigative facts that eventually provide a window into what is undoubtedly private. Indeed, such investigative techniques would not be necessary could the picture be obtained from the outset. The subject matter of the search cannot be characterized based on what the police conclude at the end of their completed investigation; it must be considered solely from the perspective of what the raw data reveals and what, if any, inferences can be taken directly from that data.

- [51] The normative approach asks what a reasonable person would expect in a free and democratic society. That reasonable person undoubtedly has an interest in not only protecting privacy, but also in ensuring the effectiveness of law enforcement. If the subject matter of a search could be characterized by every inference that could be taken from the raw data, when placed against all other investigative facts, this would result in anything but effective and efficient investigations.
- [52] This is not even to mention the fact that investigations evolve over time and the inferences that can be derived from raw data can morph with the evolution of further investigative facts. The police must be able to determine at the time they come into possession of information whether it is the subject of a reasonable expectation of privacy. If the subject matter of a search is constantly in flux and depends on the possibility that it may reveal important information after being combined with the results of other investigative steps - that may or may not be contemplated or even possible at the time of the original search - police cannot make informed decisions as to whether prior judicial authorization will be required. Such a procedure would be unworkable. Rather, the subject matter of the search must be fixed at the time of the search and the inferences that can be taken from the data must be ones that arise directly from that data.

[emphasis added.]

- [38] It is granted that Bykovets notionally involves two investigatory steps: the connection of the IP address to the accused, thus linking him to the child pornography accessed via that IP address. But the latter information is more or less instantly and directly accessed and unlocked by the revelation of the former: the subject matter of the search at the time of the search. The Supreme Court indicated that the "court must take a holistic view of the subject matter of the search. The approach must not be mechanical, and it must reflect technological reality": para 34. That clarification must be made in the context of the relatively new and complex technological mechanism of an IP address: Bykovets is not meant to broaden the conceptual subject matter of the search to the more prosaic and well-trod subsequent investigative connections used in this and other cases.
- [39] In some cases involving CCTV images, courts do determine that the subject matter of the search was a wide and intrusive enquiry into the lifestyle and life of the accused, militating toward a determination of a reasonable expectation of privacy. In other cases, the subject matter of the search is found to be more limited.
- [40] In *R. v. Kang*, 2020 BCSC 1616 ("*Kang 1616*") , at paras 51-56 Justice Winteringham (before her translation to the Court of Appeal) explains and illustrates the contextual approach leading to different outcomes based on seemingly identical evidence seized without warrant: CCTV images taken in a strata complex parking garage. In *Kang 1616*, the Court distinguished its companion case of *R. v. Latimer*, 2020 BCSC 488, which found that the real purpose of seizing the CCTV images, combined with key fob data, gathered over many days, was to obtain "identities, associations and activities of the accused as well as their

movements ", and that the evidence did in fact reveal considerable information about their comings and goings, and personal associations. This rich lifestyle information flowed from the fact that the Latimer applicants lived in or had multiple long-term visits to the strata complex, which also reflected an increased privacy interest in their own activities within the secure area of the semi-secured strata complex: para 55. In contrast, the Kang 1616 applicant had no association with the building; the CCTV and fob records, showing his one-off attendance, did not reveal similar lifestyle information. Accordingly, the Latimer accused had a reasonable expectation of privacy in the results of the search and standing, while the Kang 1616 accused did not.

- [41] Even where a search may appear to intrude on a personal sphere, it does not flow that the subject of the search revealed biographical information. Not all information about an individual is sufficiently intimate so as to engage Charter protection. In Tessling, for example, the subject matter of the alleged search was the heat emanating from the surface of a home. Despite the fact that the volume of heat was an important fact in support of the subsequently issued search warrant, the Court found that the information about the quantity of heat emitted from the home did not permit any inferences about the precise activities taking place in the home as it did not identify the specific source of the heat. The subject matter of the search therefore militated against a reasonable expectation of privacy, notwithstanding that the information involved activities within a personal residence, a highly private personal zone: see Spencer at para 28
- [42] The subject matter of the present search was significantly more limited than in Latimer and even more limited than in Kang 1616. The search did not target a residence, or even a personal vehicle, but a random solicited cab, from a happenstance public location near the accident scene. The subject matter of the search was images of the passengers inside a cab who were believed to be recently in possession of a vehicle that had been stolen from the victims of a kidnapping. The search did not reveal general comings and goings over a long period of time in a manner that would reveal lifestyle information, as in Latimer. Nor did it concern travel potentially revelatory of private lifestyle details: a trip from a personal residence or private office to a medical clinic or to the home of an intimate partner, for example. It was an intermediate trip from a random gas station to a convenience store. While it showed two individuals, and thus on a very basic level, association, it unlocked no details or intimate aspects or patterns of that association. Further, wholly public CCTV video capture from the gas station and convenience store already independently confirmed the association of the two individuals.
- [43] Applying the broad and functional approach, the police "were really after" images of the physical appearance of the two people who had been driving the stolen vehicle and were suspects in a kidnapping, solely for the purpose of identification.

B. Whether the claimant had a direct interest in the subject matter

- [44] As is typical in the jurisprudence, the Crown responsibly concedes that the applicant has a direct interest in his images.

C. Whether the claimant had a subjective expectation of privacy in the subject matter

- [45] The applicant notes that while courts have consistently found a diminished expectation of privacy in vehicles, it does not mean that this expectation of privacy is zero: particularly where the applicant exclusively occupies the back seat of a cab partly obscured by tinted windows.
- [46] The applicant further cites *Latimer and R. v Kim*, 2019 BCSC 2150 (cited therein) for the proposition that an accused's knowledge that he was likely being filmed does not necessarily negate a subjective expectation of privacy:
- [186] Even if the applicants were aware that they were subject to video surveillance throughout the common areas of the River Green complex and were aware of the strata bylaws about when such materials could be provided to law enforcement, that does not negate a subjective expectation of privacy in the circumstances. As in *Kim* (at para. 41), an individual's awareness of the potential for being monitored and the resulting diminished expectation of privacy does not support the conclusion that the individual did not have a subjective expectation of privacy in the circumstances, particularly vis-à-vis the state. The jurisprudence eschews a categorical "all-or-nothing" approach to the reasonable expectation of privacy in respect of both the subjective and objective assessments.
- [47] That said, where the applicant knows or ought to know that he is being filmed, in the presence of other members of the public, the subjective privacy expectation is attenuated: *Kang* 1616 at para 60, citing *Latimer* at para 192. As *Kang* 1616 ultimately notes, *Latimer* turns primarily on the personally revelatory, combined effect of the video and key fob data gathered over a long period: the *Kang* 1616 applicant would have an even lower subjective expectation of privacy in his images than would the *Latimer* applicant: para 61. Insofar as both *Latimer* and *Kang* 1616 emphasise the semi-private nature of the secured strata complex, not truly visible to members of the public, and insofar that in both cases key fobs combined with the images for richer evidential revelations, the present applicant would have an even lower subjective expectation of privacy.
- [48] In the present case, there is no direct evidence of a subjective expectation of privacy. The pseudonym and cash payments may indicate a desire for privacy, but that would be offset by the lack of any attempt to shield himself from being recorded, using hands or a mask or his positioning in the cab, as well as the public nature of entering and exiting a cab under the glare of other CCTV cameras and the omnipresent cab driver.
- [49] The Crown concedes that the issue at this stage is not a high hurdle to establish and can be inferred from the surrounding circumstances: *R. v. Jones*, 2017 SCC 60 at para. 22.

[50] I reach the same conclusion and analytical methodology reached in *R. v Ali*, 2022 BCSC 347 at para 34: if a subjective expectation of privacy in the subject matter " .may be inferred from the evidence, it would be a very modest one in the circumstances here. In any event, the presence or absence of a subjective expectation of privacy is not determinative of the issue." Given the low threshold and my ultimate conclusion, I will now turn to the key issue of whether any subjective expectation of privacy was objectively reasonable.

D. Whether the claimant's subjective expectation of privacy was objectively reasonable, having regard to the totality of the circumstances

[51] The fourth and paramount enquiry is whether a "reasonable and informed person in the position of the accused would expect privacy": *Cole* at para. 35. The analysis "can vary with the nature of the matter sought to be protected, the circumstances in which and the place where state intrusion occurs, and the purposes of the intrusion": *Patrick* at para. 38. In determining the objective reasonableness of a privacy expectation, regard must be had to the various sub-factors identified in *Tessling* at para 32:

- a) the place where the alleged "search" occurred;
- b) whether the subject matter was in public view;
- c) whether the subject matter had been abandoned;
- d) whether the information was already in the hands of third parties; if so, was it subject to an obligation of confidentiality?
- e) whether the police technique was intrusive in relation to the privacy interest;
- f) whether the use of surveillance technology was itself objectively unreasonable;
- g) whether the [information obtained] exposed any intimate details of the respondent's lifestyle, or information of a biographical nature.

[52] The more personal and confidential the information, the more the objective factor will lean in favour of a reasonable expectation of privacy, on the basis that reasonable and informed Canadians would be more willing to recognise the existence of a constitutionally protected privacy interest: *Cole* at para. 46.

[53] These reasons will consider each *Tessling* considerations in turn.

[54] As for location, (a) and (b), the applicant argues that a cab is not a public space for all to enter and only those who have retained the services of the business are permitted inside. Therefore, it is expected that while cab passengers may not be entitled to complete privacy, some privacy rights remain, albeit diminished.

- [55] In the present case, the applicant did not have a personal interest in the cab: only a fleeting and ephemeral connection, as one of likely dozens of passengers that day. Accessing the information did not involve intrusion into places ordinarily attracting heightened privacy interests such as a personal residence or computer. At all times he could be observed by the cab driver, a third party less than a metre away. His entry and exit into the cab were observed on public CCTV footage and were in public view.
- [56] While the jurisprudence is surprisingly scant on considerations of the public dimension of a hired cab, several authorities emphasise the low expectation, if any, of privacy in even a private vehicle, as "[d]riving on a public road is a highly regulated activity that is open to public view": *R. v. Fedan*, 2016 BCCA 26 at para 84; *R. v. Wise*, 1992 CanLII 125 (SCC), [1992] 1 SCR 527 at para 6. Similarly, courts have found no reasonable expectation of privacy in records generated by ordering a cab: *R. v. Chaudhry*, 2021 ONSC 394 at paras 2, 62.
- [57] The applicant emphasises that this particular cab had tinted windows. The opacity of the windows is not entirely clear from the cab photographs in evidence (which appear to have been taken in a darkened garage), but, suffice to say, it was happenstance that this particular cab had tinted windows: there is no evidence that the applicant specifically ordered such a vehicle. And, again, the applicant entered and exited the cab in public, as captured by the gas station and convenience store CCTV cameras.
- [58] Factor (c) -- abandonment - is of limited application here: the image is not a tissue or document discarded intentionally or carelessly. That said, again, the applicant took no steps to hide his image, or make efforts or communications after the ride to limit the use or dissemination of his image.
- [59] With respect to (d), the video capture was entirely in the hands of the third party. The applicant would not reasonably have expected any control or input over its use or dissemination. The video was not subject to any express or implied confidentiality terms, or restrictions on use, by contract or statute or otherwise.
- [60] The applicant argues that the decals served as a limiting disclaimer of sorts: an objective passenger would accept that the video could be used in an investigation concerning the safety of the driver or passenger: for example, an assault in the cab. He cites *R. v. Flintroy*, 2018 BCSC 1692 ("Flintroy 1692"):
- [36] In my view, a reasonable expectation that would flow from this warning is that the information being provided will be protected and not disseminated other than in a circumscribed way. As I have noted, the reference to the personal information bank was not such as to enable a reasonable person to know the parameters of the circumstances or likelihood or circumstances of further dissemination.
- [61] The seven words on the decal are general and imprecise and do not reasonably suggest any limitation on the use of the video capture. Its vagueness and brevity stands in contrast to the quasi-contractual disclaimers on the information forms filled out by the applicants in

Flintroy 1692 at para 35, Kang 1237 at para 63, Latimer at para 45, and R v [name redacted: publication ban], 2019 BCSC 1801 at paras 25 and 108, which delineated the specific limited uses and recipients of the gathered information, leading to the reasonable expectation, *exclusio unius*, that the information would not be provided outside these parameters, including to police, without authorisation. Notionally, the applicants in those cases could have opted not to provide the information in question had those disclaimers been absent or worded differently; notionally they relied on those disclaimers. The same could not be said of the applicant in the present case.

- [62] Further, while not in direct evidence, defence brought the Court to the provisions of the BC Passenger Transportation Board BC Taxi Camera Rule quoted and described in Groff at paras 8-9. Those provisions *inter alia* mandate restrictions on video cameras in cabs, in part for the protection and notification of passengers. For example, those provisions expressly require the decals cited in the present case. Those provisions also permit the cab driver or company to provide the video images to police without a search warrant: see Groff at para 96. I recognise, as did Groff at para 96, that legislative provisions are not determinative, and are but one factor in the totality of circumstances to be considered. That said, it serves as a significant factor in the normative evaluation of reasonable privacy expectations that the state-designated specialised regulator, tasked with balancing the rights and expectations of passengers, would permit release of video images to police upon request, without requiring advance judicial authorisation.
- [63] With respect to (e) and (f), the use of this evidence gathering technique was not objectively unreasonable or intrusive. It involved neither trespass nor trickery. It did not impinge upon *prima facie* private places, or places where private acts might reasonably occur. Just as the police gathered CCTV from various other public and private sources and locations in this case, including from the gas station, the convenience store, and neighbours, they gathered it from the cab driver. Gathering CCTV evidence from locations ordinarily accessible to members of the public is an ordinary and sensible method of collecting evidence: a normatively inoffensive investigative step that would not just be accepted by the public, but expected by the public. Similarly, the use of cameras in cabs is objectively reasonable: not only accepted but embraced in the potentially riskier ride share app world, with a broader pool of drivers, within a less regulated market for taxi cab services.
- [64] Finally, with respect to (g), as set out above, the video stills, on their own or even combined with other fruits of the investigation, do not reveal or unlock any intimate details of the applicant's lifestyle or information of a biographical nature. They are unremarkable neutral screen-captured images of the applicant. This stands in contrast to the long-term video surveillance combined with the key fob information revealing lifestyle-rich evidence in cases such as Latimer. As I noted in R. v Cade, Ceal, and Whaling, 2022 BCSC 2326 at para 62, Latimer focuses on the combined effect of a resident's Form K document with the other materials inappropriately provided by the strata property concierge: lengthy and protracted CCTV footage and key fob access records, as well as information about the parking spots

associated with the unit, and emails concerning the unit:

- [66] Where the police obtain access to the data generated by multiple such electronic devices, they often obtain a near-comprehensive record of the subject's actions and lifestyle, down to intimate details:
- [154] The key fobs record the movements of the fob associated to an owner or tenant of the complex. The fob access records contain data regarding the time, date and area accessed by a registered fob, and thus capture a significant amount of information about a fob user's movements. That information is even more powerful when cross-referenced with CCTV footage of the areas accessed, and collectively they can establish a comprehensive record of lifestyle choices within the residential complex - who went where when, with whom, and what they were carrying, wearing, and doing.
- [65] This conclusion matches the general jurisprudential tenor that applicants generally lack a reasonable expectation of privacy in CCTV images or footage taken in a public or semi-public place, consistent with the Tessling observation that "a person can have no reasonable expectation of privacy in what he or she knowingly exposes to the public, or to a section of the public, or abandons in a public place": para 40. Even within that jurisprudence, the totality of the facts underlying the present application is weaker than in other cases rejecting an assertion of reasonable expectation of privacy.
- [66] As set out above, insofar as both Latimer and Kang 1616 emphasise the semi-private nature of the secured strata complex, not truly visible to members of the public, the present applicant would have an even lower subjective expectation of privacy. The video stills in the present case are also more biographically and informationally sparse than the evidence in Kang 1616, where the applicant was nonetheless found to lack standing: many (not only six, as here) videos (not only still images, as here), combined with key fob data: see para 22.
- [67] The grainy bare video stills in the present case are also much more biographically sparse than the biometric photograph of the applicant in *R v Ali*, 2022 BCSC 347, whom the Court found lacked standing, even though that enhanced image was also accompanied by his date of birth, his address and telephone numbers, his permanent resident status, his refugee travel document number, his date of entry into Canada, and his parents' names and birthdates. Here, the video stills provided an image of the applicant, and the non-personal public information of his pick-up and drop-off locations, and little more.
- [68] Other recent decisions of this court have similarly found that the applicants had no subjectively reasonable expectation of privacy over images of themselves captured by CCTV in public areas: *R. v. [name redacted: publication ban]* 2021 BCSC 326 and *R. v. Abo Zead*, 2020 BCSC 2145: again, based on more clips, and more revelatory clips, than in the present case. Similarly, *R. v. Ley and Wiwchar*, 2014 BCSC 2108, held that the accused had no reasonable expectation of privacy with respect to his image, posture, gait, clothing, or activities, while in the Edgewater Casino in Vancouver, although he did have a reasonable expectation of privacy in the screen of his Blackberry that was captured by the camera.

Courts also rejected assertions of reasonable expectations of privacy in CCTV images captured in public or semi-public places in *R. v. Merritt*, 2017 ONSC 366 and *R. v. Brewster*, 2019 ONCA 942.

- [69] Before concluding, I will address the Provincial Court decision in *Groff*. While the facts and evidence superficially resemble those in the present case, the *Groff* search was more biographically invasive and revelatory than in the present case: the combined effect of the accused's video image, phone number, and home address, directly connected the dots between the accused, his home address, and the scene of the shooting. In contrast to the present case, there was a clear temporal and geographic link between that information and the shooting: the pick up was at 1:05 am; the drop off at 1:40 am, and the shooting at 1:56 am. In contrast to the random pick up and drop off, far from the applicant's residence and the scene of the crime, in the present case, the *Groff* cab picked up the accused directly from his personal residence and drove him directly to the shooting location: para 17. In contrast to the present case, which did not involve the applicant's home address or personal phone number, the address and the phone number used in ordering the cab were directly tied to the accused. In contrast to the one-off cab trip in the present case, there were at least two cab orders in *Groff*, the second of which involved a delivery of cigarettes to his residence, thus revealing some lifestyle patterns and information. In contrast to the present two passengers, the *Groff* applicant was solo: more privacy. In contrast to the dovetail book-end public CCTV images showing two individuals entering and exiting the cab in the present case, in *Groff* there was no video showing cab entry, and limited video showing cab exit. In contrast to the simple still images of the present applicant, the police zoomed in the *Groff* video stills to reveal uniquely personal physical characteristics of the accused: specific photos focussing on his neck, right and left hand, tattoos, and clothing details: para 23. In this, the invasive, detailed, and enhanced *Groff* images engaged the Latimer concern about omnipresent and permanent capture of microscopic aspects of the subject's actions in digital form amenable to enhancement and manipulation:
- [155] Moreover, much like video replay at sporting events, CCTV footage permits a viewer to play back, pause, study and interpret the images captured. In that regard, CCTV footage is completely different from the brief and fleeting observations made by eye-witnesses or surveillance officers. It is reviewable, permanent and far more informative. CCTV footage memorializes the interactions and movements of individuals, transforming the passing observations stored in human memory into a permanent visual record of a person's movements.
- [70] In any case, while *Groff* found that the totality of circumstances in that case allowed the applicant to cross the bare threshold of standing to assert a privacy interest in the combined effects of his image, personal phone number, and home address, the Court expressly declined to quantify the extent of the privacy expectation in its first decision. In the unreported s. 24(2) analysis decision (10 October 2023), the Court concluded that the privacy expectation was "properly characterized as very low", and ultimately permitted its use at

trial: paras 119, 145.

IV. Conclusion

- [71] The reasonable expectation of privacy analysis is intended to strike an appropriate balance between the individual's right to be free from state interference, and the public's interest in law enforcement and the investigation of crime: Ali, 2022 at para 51; Marakah at para. 179, per Justice Moldaver (dissenting but not on this point); R. v. Wong, 2016 BCSC 1834 at para. 48.
- [72] Applying a normative assessment to the totality of the circumstances, I am not persuaded that the applicant has shown a reasonable expectation of privacy in the CCTV still images obtained by the police from the cab camera. He is accordingly without standing to claim a breach of s. 8 of the Charter.
- [73] In the alternative, if s. 8 standing were established, s. 24(2) would work strongly against its exclusion (as it did in Groff), largely for the same reasons set out above and in the Groff s.24(2) decision. Police collection of those images, as probative and reliable evidence, would not only be normatively accepted but would be normatively expected, and a reasonable person, informed of all relevant circumstances and the values underlying the Charter, would conclude that exclusion of the evidence would in fact bring the administration of justice into disrepute.
- [74] The Court dismisses the application.

"Crerar J"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/24/2025BCSC2403.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-garkouth-ibrahim-hussein-and-obatusa-2025>

Prepared on 28 October 2026 · Esheria