

CANADA / JUDGMENT

R. v. Jeeves

2025 BCSC 133

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2025 BCSC 133 R. v. Jeeves

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Jeeves,

2025 BCSC 133

Date: 20250129

Docket: 47506-2

Registry: Penticton

Rex

v.

James Ryan Jeeves

Before: The Honourable Madam Justice Ker

Reasons for Judgment

Counsel for the Crown:

J.M. Le Dressay

Counsel for the Accused:

N. Acker

Place and Date of Hearing

Penticton, B.C.

July 12, 2024

Date of Ruling with Written Reasons to follow:

July 19, 2024

Place and Date of Judgment:

Penticton, B.C.

January 29, 2025

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Introduction

- [1] These are my reasons on the application of the accused, James Ryan Jeeves, to exclude evidence seized from his vehicle by the Penticton RCMP on April 16, 2020. This application follows from findings that the accused's Charter rights were breached. The circumstances and the breaches are set out in my reasons on the voir dire ruling indexed as 2023 BCSC 2528 (the "Reasons").
- [2] James Ryan Jeeves is charged with three counts of possession for the purpose of trafficking from April 16, 2020 in Penticton, BC. Each count relates to a different controlled substance, being fentanyl, cocaine, and methamphetamine, found in a small satchel located in his motor vehicle when he was stopped by the Penticton RCMP.
- [3] The trial of this matter commenced with a voir dire. Mr. Jeeves contended that his rights under s. 8, 9, 10(a), and 10(b) of the Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being schedule B to the Canada Act 1982 (UK), 1982, c. 11 [Charter] were breached when he was stopped by a member of the Penticton RCMP, and then when his vehicle was searched consequent upon his detention and arrest.
- [4] In the Reasons, I found that although the initial stop of Mr. Jeeves by Cst. Bradley Caruso of the Penticton RCMP was a valid motor vehicle stop as contemplated by the Supreme Court of Canada decision in *R. v. Ladouceur*, [1990] 1 S.C.R. 1257, 1990 CanLII 108, the complexion of the detention changed immediately when Cst. Chad Jackson attended the scene, took over the investigation, and eventually arrested Mr. Jeeves for possession of a weapon for purpose dangerous and the possibility that the motor vehicle he was driving was stolen. And so, while the initial detention by Cst. Caruso did not violate s. 9 of the Charter, Cst Jackson's approach to the matter did: Reasons at paras. 62-67.
- [5] The parties provided their submissions on the s. 24(2) aspect of this case on July 12, 2024. On July 19, 2024, I issued a Memorandum to Counsel ("MTC") advising of the result on the s. 24(2) voir dire. For completeness, the relevant portion of the MTC states:

Counsel for Mr. Jeeves argued that in light of the Charter breaches found on Voir Dire #1 (being breaches of Mr. Jeeves's ss. 8, 9, and 10(a) and (b) Charter rights when he was detained, subjected to a search of his person and vehicle, and arrested by Penticton RCMP on April 16, 2020) the evidence obtained in the search of Mr. Jeeves's person and vehicle ought to be excluded under the s. 24(2) analytical framework as outlined in *R. v. Grant*, 2009 SCC 32 and *R. v. Le*, 2019 SCC 34. The defence contends that in this case, all three branches of the Grant analysis and the overall weighing of them militate in favour of concluding that the admission of the evidence would tend to bring the administration of justice into disrepute in light of the number and nature of the Charter breaches in this case.

The Crown argued that notwithstanding the Charter breaches the Court found in the December 14, 2023 oral ruling in this case, once the s. 24(2) analysis is properly applied the evidence obtained in the search of Mr. Jeeves's person and vehicle ought to be admitted as exclusion of the evidence would tend to bring the administration of justice into disrepute, citing *R. v. McColman*, 2023 SCC 8 and *R. v. Omar*, 2019 SCC 32, adopting the dissent of Brown J.A. in *R. v. Omar*, 2018 ONCA 975.

The s. 24(2) Charter analysis must always remain contextual and the application of the provision in any given case is necessarily informed by the whole of the circumstances of the particular case that the court is considering.

The language of s. 24(2) presumes admissibility of the evidence unless it is established that exclusion is warranted. Accordingly, the onus is on the applicant to establish that the evidence obtained pursuant to breaches of Charter rights should be excluded under s. 24(2): *R. v. Lauriente*, 2010 BCCA 72, at ¶6; *R. v. Fearon*, 2014 SCC 77, at ¶89; *R. v. Mann*, 2014 BCCA 231, at ¶124.

Having considered the whole of the circumstances surrounding this case, the submissions of counsel, and having reviewed the authorities provided, I have determined that the overall balancing of the three branches of the Grant analysis militates in favour of admission of the evidence obtained, notwithstanding a number of Charter breaches having been found in this case. I conclude that the exclusion of the evidence in this case would tend to bring the administration of justice into disrepute. Accordingly, the evidence obtained during the searches of Mr. Jeeves's person and vehicle is admissible in his trial.

- [6] These are my reasons outlining why I determined that the evidence obtained from Mr. Jeeves following his detention and arrest by members of the Penticton RCMP would be admissible at his trial, notwithstanding the found breaches of his ss. 8, 9, 10(a) and 10(b) Charter rights.

The Sections 8, 9, 10(a) and 10(b) Charter violations

- [7] I begin with a brief review of the Reasons in this matter, in which I found the police breached Mr. Jeeves's Charter rights. They provide the background facts necessary to inform my analysis in this decision, and for that purpose I incorporate the previous Reasons into this set of reasons.
- [8] To understand how these breaches occurred, it is critical to recall the context of this investigation: The entirety of the roadside interaction between Mr. Jeeves and the police lasted approximately nine minutes. These nine minutes spanned the time Mr. Jeeves was blocked in his driveway by Cst. Caruso through completion of Cst. Jackson's search of the motor vehicle and satchel in the vehicle and Mr. Jeeves' re-arrest for possession for the purpose of trafficking: Reasons at paras. 7-11, 61, 75, 97, 118. As I noted in the Reasons:

- [14] The legal complications that can arise when motor vehicle stops conducted pursuant to the Motor Vehicle Act, R.S.B.C 1996, c. 318 are superseded by other intervening investigational events were succinctly addressed by Mr. Justice Riley in *R. v. Woody*, 2018 BCSC 2275 at paras. 39-41:
- [39] One of the most significant challenges in applying these Charter provisions in the context of vehicle stops is distinguishing or drawing the line between stops based upon enforcement of traffic or vehicle safety laws, and stops based upon criminal investigation. Sometimes both sets of interests are engaged. Sometimes the stop is initiated to address compliance with the Motor Vehicle Act, but then evolves into a criminal investigation. There are at least two facets to this problem.
- [40] One challenge is in identifying or characterizing the initial basis for the stop. This is difficult because police officers are human beings, and they often have a mix of reasons or concerns at play when carrying out their duties. In many cases, a police officer may have a mix of reasons, purposes, objectives, or motivations for stopping a vehicle. The challenge is in determining the proper legal test or analytical approach in drawing the line between legitimate exercise of Motor Vehicle Act enforcement powers, and misuse of those powers in furtherance of a criminal investigation.
- [41] Another facet of the problem is that in the real world, things can unfold quickly, sometimes in unpredictable ways. Vehicle stops can be dynamic events. As Binnie J. put it in *Nolet* at para. 4 "roadside stops sometimes develop in unpredictable ways", and at para. 23 "[a] roadside stop is not a static event". What this means is that a stop that starts as a traffic or vehicle safety stop might sometimes develop or evolve into a criminal investigation. The challenge is in ensuring that where the police rely upon Motor Vehicle Act enforcement powers, their conduct must stay within the limits of their authority.
- [15] The circumstances of this case demonstrate the wisdom of Riley J.'s observations.
- [9] The whole context of the nine-minute encounter illustrate a seemingly rapidly-evolving situation, particularly within the first two or three minutes of the roadside stop. In this case, I concluded that the observations of Riley J. (as he then was) in *R. v. Woody*, 2018 BCSC 2275, at para. 42, were applicable:
- [42] The risk that police might misuse Motor Vehicle Act enforcement powers as a means of conducting unfounded general inquisitions into criminal activity is of particular concern when dealing with random vehicle stops. This is because, as explained above, a random vehicle stop is a *prima facie* violation of the right to be free from arbitrary detention, which is then justified as a reasonable limit under s. 1 of the Charter. To paraphrase Binnie J. in *Nolet* at para. 22, a random vehicle stop is by definition an arbitrary detention that will only be justified under s. 1 of the Charter if the police act within the limited traffic and vehicle safety related purposes for which the powers were conferred. Or, as Groberman J.A. put it in *Kaddoura* at para. 21, "[w]hen a random check stop is used to conduct criminal investigations as well as motor vehicle checks", the s. 1 analysis is altered because "the stop

becomes a more invasive one, and the pressing and substantial objective is diluted". In this respect, courts have been vigilant to ensure that the police do not use random vehicle stop programs as a means of conducting 'unfounded general inquisitions' into the activities of motorists: *R. v. Mellenthin*, 1992 CanLII 50 (SCC), [1992] 3 S.C.R. 615, 76 C.C.C. (3d) 481 at p. 487; *R. v. Ladouceur*, 2002 SKCA 73.

- [10] Ostensibly, and in his mind, Cst. Jackson had Mr. Jeeves stopped by Cst. Caruso as a traffic stop to determine whether the vehicle was stolen, given the plate on Mr. Jeeves's Vitara was registered to another vehicle. What developed out of the traffic stop was a criminal investigation for a different offence believed to have been committed: possession of a weapon for a dangerous purpose.
- [11] I made the following findings of fact in my previous ruling on this case:
- 1) The initial motor vehicle stop of Mr. Jeeves by Cst. Caruso, at Cst. Jackson's direction, was validly made pursuant to the principles in *Ladouceur: Jeeves* at paras. 24-32, 62-66. There was no breach of s. 9 of the Charter at this juncture, although there was a technical breach of s. 10(a) when Cst. Caruso failed to advise Mr. Jeeves of the reason he was stopped: *Reasons* at paras. 93-102;
 - 2) The purpose of Mr. Jeeves's detention by the police immediately changed when Cst. Jackson arrived on scene and was advised about a collapsible baton that had fallen from the driver's side of the vehicle. Cst. Jackson started to conduct a criminal investigation related to both possession of a weapon for a dangerous purpose and possession of stolen property (the belief the motor vehicle might be stolen): *Reasons* at paras. 33-36. Cst. Jackson handcuffed Mr. Jeeves, told him why he had been stopped (suspicion of a stolen vehicle), placed him in Cst. Caruso's police vehicle, and then searched the vehicle for the transfer papers that Mr. Jeeves directed him to: *Reasons* at paras. 37-44. Not satisfied with what he had found in relation to the status of the vehicle, Cst. Jackson conducted a more exhaustive search of the vehicle looking for papers and weapons and located drugs and a large amount of cash in a black satchel found between the driver and front passenger seats: *Reasons* at paras. 44-47.
 - 3) It was only after Cst. Jackson located the drugs and cash in the black satchel in Mr. Jeeves's vehicle that he formally advised Mr. Jeeves that he was under arrest for specific offences and at this point provided him with his right to counsel pursuant to s. 10(b) of the Charter: *Reasons* at paras. 47-49.
 - 4) I found that Mr. Jeeves was only advised that he was under arrest, not the reason for his arrest. Cst. Jackson searched the area of the vehicle where Mr. Jeeves told him the vehicle transfer papers were located. Because he was not satisfied with the state of the transfer papers, Cst. Jackson searched the vehicle further. His further search of the vehicle led the officer to a black satchel that contained money and drugs: *Reasons* at paras. 48-50.

- 5) I found that while Cst. Jackson had the subjective grounds to arrest Mr. Jeeves, his grounds were not objectively reasonable. Therefore, Mr. Jeeves was subjected to an arbitrary arrest and detention in breach of his s. 9 Charter rights: Reasons at paras. 71-79, 84-85.
 - 6) As Mr. Jeeves's s. 9 rights had been breached and the arrest was arbitrary, the search of the vehicle by Cst. Jackson was not conducted pursuant to the search incidental to arrest power and so the search constituted a breach of Mr. Jeeves's s. 8 Charter rights: Reasons at paras. 86-91.
 - 7) The technical breach of Mr. Jeeves's s. 10(a) rights by Cst. Caruso was cured by Cst. Jackson when he told the accused why he was stopped. However, Cst. Jackson's failure to tell Mr. Jeeves why he had been placed under arrest constituted a separate breach of s. 10(a) of the Charter: Reasons at paras. 101-104.
 - 8) The Crown conceded two breaches of Mr. Jeeves' s. 10(b) Charter rights: Reasons at paras. 105-117.
- [12] The evidence that the defence seeks to have excluded under s. 24(2) of the Charter is all the evidence seized from his person, his vehicle and the baton seized from the ground outside the driver's door of the vehicle. More specifically, that evidence is:
- 1) A cell phone and \$630 cash seized from the search of Mr. Jeeves;
 - 2) An extendable baton seized from the area outside the driver's door of the vehicle;
 - 3) \$5,305 cash seized from inside the vehicle (in the black satchel);
 - 4) The following amounts of controlled substances seized from the black satchel inside Mr. Jeeves's vehicle:
 - a. 9.43 gm of powdered cocaine;
 - b. 1.19 gm of crack cocaine;
 - c. 2.96 gm of fentanyl;
 - d. 3.35 gm of methamphetamine.

[13] Before applying the s. 24(2) analytical framework mandated by the jurisprudence to the circumstances of this case, I will briefly review the governing legal principles.

Governing Legal Principles

[14] Section 24(2) of the Charter provides as follows:

Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

- [15] The purpose of excluding evidence under s. 24(2) has always been grounded in preserving the reputation of the administration of justice, consistent with the language of the section, and not for the purpose of deterring police or compensating for wrongs done: *R. v. Grant*, 2009 SCC 32 at para. 70; *R. v. Harrison*, 2009 SCC 34 at para. 36. The Supreme Court of Canada held in *Grant* that the inquiry is long-term, prospective, and focused on systemic concerns: *Grant* at paras. 36, 68-71; see also *R. v. McColman*, 2023 SCC 8 at para. 57. The Supreme Court also held in *R. v. Morelli*, 2010 SCC 8 at para. 102 that judicial indifference to unacceptable police conduct jeopardizes the reputation of the administration of justice.
- [16] Courts assess disrepute from the standard of the reasonable citizen who is "dispassionate and fully apprised of the circumstances of the case" and who represents reasonable community values: *R. v. Collins*, [1987] 1 S.C.R. 265 at para. 33; *R. v. Calder*, [1996] 1 S.C.R. 660 at para. 34.
- [17] The language of s. 24(2) recognizes a reverse onus of proof. Evidence is presumed admissible unless the applicant establishes: (i) that the evidence was obtained through a Charter violation and, (ii) that any evidence thereby obtained should be excluded: *R. v. Lauriente*, 2010 BCCA 72 at para. 6; *R. v. Fearon*, 2014 SCC 77 at para. 89. These are the 'threshold' and 'evaluative' components of the s. 24(2) analysis, respectively.

First Stage: Threshold Requirement

- [18] At the first stage of the s. 24(2) analysis the court must determine whether there is a sufficient nexus between the breach of the Charter right and the evidence that is sought to be excluded, such that it was "obtained in a manner" that breached the Charter. In *R. v. Tim*, 2022 SCC 12, the Supreme Court of Canada summarized the threshold inquiry:
- [78] This Court has provided guidance as to when evidence is "obtained in a manner" that breached an accused's Charter rights so as to trigger s. 24(2):
1. The courts take "a purposive and generous approach" to whether evidence was "obtained in a manner" that breached an accused's Charter rights (*R. v. Wittwer*, 2008 SCC 33, [2008] 2 S.C.R. 235, at para. 21; *R. v. Mack*, 2014 SCC 58, [2014] 3 S.C.R. 3, at para. 38).
 2. The "entire chain of events" involving the Charter breach and the impugned evidence should be examined (*R. v. Strachan*, 1988 CanLII 25 (SCC), [1988] 2 S.C.R. 980, at pp. 1005-6).
 3. "Evidence will be tainted if the breach and the discovery of the impugned evidence are part of the same transaction or course of conduct" (*Mack*, at para. 38; see also *Wittwer*, at para. 21).

4. The connection between the Charter breach and the impugned evidence can be "temporal, contextual, causal or a combination of the three" (Wittwer, at para. 21, quoting *R. v. Plaha* (2004), 2004 CanLII 21043 (ON CA), 189 O.A.C. 376, at para. 45). A causal connection is not required (Wittwer, at para. 21; *R. v. Mian*, 2014 SCC 54, [2014] 2 S.C.R. 689, at para. 83; Strachan, at pp. 1000-1002).
5. A remote or tenuous connection between the Charter breach and the impugned evidence will not suffice to trigger s. 24(2) (Mack, at para. 38; Wittwer, at para. 21; *R. v. Goldhart*, 1996 CanLII 214 (SCC), [1996] 2 S.C.R. 463, at para. 40; Strachan, at pp. 1005-6). Such situations should be dealt with on a case by case basis. There is "no hard and fast rule for determining when evidence obtained following the infringement of a Charter right becomes too remote" (Strachan, at p. 1006).

Second Stage: Evaluative Component

- [19] If the threshold is satisfied, the second component is an evaluative inquiry utilizing the framework established in *Grant* at para. 71. In *R. v. Bottomley*, 2023 BCSC 603, at paras. 37-40, Justice Devlin comprehensively and succinctly outlined the three-pronged evaluative exercise mandated by *Grant*:
- [37] In *Grant*, the Supreme Court of Canada identified three lines of inquiry for determining whether evidence obtained in a Charter-infringing manner should be excluded under s. 24(2) of the Charter. The factors to consider and weigh are (at para. 71):
- (1) the seriousness of the Charter-infringing state conduct (admission may send the message the justice system condones serious state misconduct),
 - (2) the impact of the breach on the Charter-protected interests of the accused (admission may send the message that individual rights count for little), and
 - (3) society's interest in the adjudication of the case on its merits.
- [38] These factors do not operate as a disjunctive three-part test. There are no particular findings under the three lines of inquiry that mandate particular results, and it "is not simply a question of whether the majority of the relevant factors favour exclusion in a particular case": *R. v. Harrison*, 2009 SCC 34 at para. 36 [Harrison]. The balancing mandated by s. 24(2) is "qualitative in nature and therefore not capable of mathematical precision": *Grant* at para. 140.
- [39] Rather, courts must assess and balance considerations under all three factors to determine whether, on balance and having regard to all the circumstances, admitting the impugned evidence would bring the administration of justice into disrepute in the long-term. In doing so, the trial judge assumes the objective perspective of a reasonable person, informed of all relevant circumstances and the values underlying the Charter. See *Grant* at paras. 68, 85-86.

- [40] The Grant factors look to the long-term integrity of, and public confidence in, the justice system: Grant at para. 68; Harrison at para. 36. The focus of s. 24(2) is also prospective. It starts from the proposition that damage has already been done to the public's confidence in the administration of justice by the Charter violation or violations that gave rise to the s. 24(2) analysis. Thus, the Grant analysis concerns itself with whether admitting the impugned evidence will do further damage to the reputé of the justice system: Grant at para. 69. Finally, s. 24(2) has a societal focus, and is aimed not at punishing the police or compensating the accused, but rather at systemic concerns, focusing on the broad impact of the admission of the evidence on the long-term reputé of the justice system: Grant at para. 70.
- [20] Having regard to all the circumstances of the case, the court must weigh each line of inquiry in the balance to determine whether admission of the evidence would bring the administration of justice into disrepute. In Harrison at para. 36, the Supreme Court elaborated on the nature of the second stage of the Grant analysis:
- [36] The balancing exercise mandated by s. 24(2) is a qualitative one, not capable of mathematical precision. It is not simply a question of whether the majority of the relevant factors favour exclusion in a particular case. The evidence on each line of inquiry must be weighed in the balance, to determine whether, having regard to all the circumstances, admission of the evidence would bring the administration of justice into disrepute. Dissociation of the justice system from police misconduct does not always trump the truth-seeking interests of the criminal justice system. Nor is the converse true. In all cases, it is the long-term reputé of the administration of justice that must be assessed.

[Emphasis added.]

Positions of the Parties

- [21] As is apparent from my earlier ruling in Jeeves, the defence established the Charter violations, meeting the threshold requirement. The onus is now on the defence to establish that exclusion is warranted.

Counsel for the Defendant

- [22] Counsel for Mr. Jeeves contends that the number of Charter breaches, when considered in context and the totality of the circumstances, elevates this case to a serious Charter infringing case that would appall reasonable members of the public properly informed of the circumstances and the importance of respecting Charter values. Defence submits that the number of Charter breaches found to have occurred (largely at the instance of Cst. Jackson's investigative steps) cannot be described as unintentional, minor, or less serious. Rather, the court should consider these breaches as part of the very wilful conduct on the part of the officer.

- [23] The defence contends that the first two lines of inquiry under the Grant analysis militate heavily in favour of exclusion of the evidence. Concerning the third line of inquiry--society's interest in adjudication on the merits--the defence acknowledges that exclusion of the evidence will end the Crown's case. Therefore, counsel concedes that this factor pulls towards admission of the evidence, but not overwhelmingly so in the circumstances.
- [24] Counsel for Mr. Jeeves relies primarily on *R. v. Le*, 2019 SCC 34, to support his position. He argues that, once all three lines of the evaluative inquiry are conducted and the appropriate balancing is undertaken, the administration of justice would be better served by exclusion of the evidence. Counsel contends that admission of the evidence will bring the administration of justice into disrepute.

Crown Counsel

- [25] Counsel for the Crown relied primarily upon the more recent decision of the Supreme Court of Canada in *McColman* to argue that when the Charter breaches are considered in the context of what the police were dealing with in this case--a rapidly evolving investigation that started as a legitimate motor vehicle stop but quickly changed course within nine short minutes--the factors tend towards admission of the evidence: the breaches are not at the serious or flagrant end of the spectrum; the accused's privacy interests in a motor vehicle are attenuated; and society's interest in an adjudication on the merits of the case balances in favour of admission.

The Section 24(2) Inquiry

- [26] Crown and defence counsel agree on the general legal principles governing the s. 24(2) analysis mandated by *Grant*.

The Threshold Requirement that the Evidence was "Obtained in a Manner" Violating Charter Rights of Accused

- [27] In the case at bar, the fourth point of guidance provided by the Supreme Court in *Tim* is contentious. The Crown concedes a clear causal nexus between the evidence seized from Mr. Jeeves and from his vehicle and the found breach that the arrest for possession of a weapon for a purpose dangerous was not Charter compliant and the searches were not incidental to a valid arrest.
- [28] The Crown also concedes a temporal and contextual nexus between all the seizures and the s. 10 Charter breaches but not a causal connection. However, relying upon *R. v. Choi*, 2021 BCCA 410 at paras. 94-100 (para 98 in particular) the Crown contends there is no causal connection between the s. 10 breaches of Mr. Jeeves's Charter rights and the discovery of the evidence in his vehicle. To that end, the lack of a causal connection is one aspect of the overall circumstances to be considered in the final balancing exercise: *Choi*, at para. 98.

- [29] In *R. v. Bottomley*, 2023 BCSC 603, at paras. 23-24, Justice Devlin reviewed the remoteness issue of the threshold stage in the context of a s. 10(b) breach for one accused (Hayer) and noted:
- [23] a breach of an accused's s. 10(b) right that on its own is likely too "remote and tenuous" to engage s. 24(2) may nonetheless assist an applicant in satisfying the threshold where a denial of their right to counsel "occurred in the context of one single transaction" involving several other Charter breaches, and which resulted in the discovery of evidence: e.g., *R. v. Moonie*, 2013 BCSC 1866 at para. 70 [Moonie].
- [24] That said, where the requisite (temporal and contextual) nexus exists to engage s. 24(2), the absence of a causal connection between the breach and discovery of evidence may count as a factor militating against exclusion under s. 24(2)'s evaluative component: e.g., *R. v. Cade, Ceal, and Whaling*, 2023 BCSC 158 at para. 131 [Cade]; *R. v. Lenhardt*, 2019 ONCA 416 at para. 11; *R. v. Griffith*, 2021 ONCA 302 at para. 71 [Griffith]; and *R. v. Choi*, 2021 BCCA 410 at paras. 98-99 [Choi]
- [30] In the case at bar, there is no causal connection between the discovery of the evidence seized and the s. 10 breaches committed by both Csts. Caruso and Jackson. To that end then, the lack of a causal connection in the circumstances of this case points to a rather tenuous temporal and contextual connection between the s. 10 breaches and whether the evidence ought to be excluded. On the strength of the court's reasoning in *Choi*, the s. 10 breaches remain relevant at the evaluative stage of the analysis. Indeed, the Crown acknowledges that this is an appropriate way to proceed in the circumstances.

The Grant Evaluative Exercise: Exclusion of the Evidence

- [31] Having found that the threshold requirement that the evidence seized in this case was obtained in a manner infringing Mr. Jeeves's ss. 8 and 9 Charter rights in particular is satisfied, I must now engage in the evaluative exercise mandated by s. 24(2) and objectively determine whether the admission of the evidence would bring the administration of justice into disrepute: *R. v. Reilly*, 2020 BCCA 369 at para. 75, *aff'd in part* 2021 SCC 38; *Bottomley* at paras. 36-40.
- i. Seriousness of the Charter-Infringing State Conduct
- [32] The first line of inquiry is a review of state conduct and includes consideration of the following:
- the degree or gravity of state offending (*Grant* at paras. 73-74; *Harrison* at para. 22)
 - extenuating circumstances such as the need to prevent the disappearance of evidence (*Grant* at para. 75)
 - whether the breach was committed in good faith or merely technical (*Grant* at paras. 75, 108; *Harrison* at para. 22)

- any pattern of abuse (Grant at para. 75; Harrison at para. 25)
 - other police conduct, such as an officer's misleading in-court testimony (Harrison at para. 22).
- [33] Under this first branch of the evaluative inquiry, the court takes an objective approach to the analysis, i.e., how serious were the Charter violations. The court's task in considering the seriousness of Charter-infringing state conduct is to situate that conduct on a scale of culpability: Le at para. 141; Tim at para. 82. The focus is on the extent to which the state conduct deviates from the rule of law: McColman at para. 57.
- [34] In *R. v. Beaver*, 2022 SCC 54, Justice Jamal, writing for the majority, explained the first branch of the evaluative inquiry in the following manner:
- [120] The first line of inquiry under s. 24(2) considers whether the Charter-infringing state conduct is so serious that the court needs to dissociate itself from it. This inquiry requires the court to situate the Charter-infringing conduct on a scale of culpability. At one end of the scale is conduct that constitutes a wilful or reckless disregard of Charter rights, a systemic pattern of Charter-infringing conduct, or a major departure from Charter standards. At the other end of the scale are less serious Charter breaches, including breaches that are inadvertent, technical, or minor or those that reflect an understandable mistake. The more severe the state's Charter-infringing conduct, the greater the need for courts to disassociate themselves from it. [Citations omitted.]
- [35] I have found that several of Mr. Jeeves's Charter rights were violated in this case: ss. 8, 9, 10(a) and 10(b). While the number of breaches is concerning, when considered in the context of the totality of the circumstances, I would not describe them as wilful, flagrant or intentional or at the most serious end of the scale of culpability.
- [36] The initial stop of the accused by Cst. Caruso was a valid motor vehicle stop. But it immediately transformed into a criminal investigation with the arrival of Cst. Jackson and his being directed to the collapsible baton on the ground. And, while I found that Cst. Jackson had subjective grounds to detain Mr. Jeeves for possession of a weapon, when the totality of the circumstances was considered, the objective reasonableness of Cst. Jackson's grounds were lacking. I found that the officer was simply acting upon a hunch. Believing he had the requisite grounds to detain and arrest the accused, Cst. Jackson then searched the vehicle. When he was still not satisfied with the status of the transfer papers, he elected to search the vehicle further.
- [37] As noted in *R. v. Chapman*, 2020 SKCA 11, although the reasonable grounds legal standard is well-defined, the edges of it can be difficult to recognize in real time, without the luxury of judicial reflection. To that end, if police officers are not "far off" from having reasonable grounds, the seriousness of the breach may be attenuated somewhat: Chapman at paras. 105-108. In this case, the s. 9 and s. 8 breaches inform one another. They occurred in a rapidly evolving and dynamic situation within a compressed time frame: Woody, at para. 41.

Cst. Jackson subjectively believed he had met the reasonable grounds to believe standard. Similar to the observations in Chapman, the officer was not that "far off". This was not a case where Mr. Jeeves was stopped for an improper purpose. In addition, it was not a case of a complete absence of any reason to conduct further investigation. Cst. Jackson had, at the very least, a hunch or suspicion that Mr. Jeeves was committing the offence for which he was initially detained. Therefore, I am satisfied that Cst. Jackson did not make an entirely rash decision and his actions as a whole were not unreasonable.

- [38] Concerning the search of the vehicle proper, Cst. Jackson conducted the search only to the extent permitted incidental to an arrest. While he incorrectly believed the arrest was lawful, there is no evidence to suggest that the search itself was conducted in an unreasonable manner.
- [39] The search of the contents of the vehicle after the discovery of the transfer papers in the visor above the driver's seat is, in my view, the more concerning part of the constellation of Charter breaches in this case. However, while clearly not a good faith, technical, or inadvertent breach, it is also not what I would characterize as a wilful, flagrant or intentional breach. Nor is the breach the product of a police policy of deliberate non-compliance with legal requirements. In other words, the search conduct here is not a systemic breach.
- [40] The ss. 10(a) and 10(b) breaches, collectively, while always concerning, are not in the vein of egregious breaches where the officers were intent on riding rough-shod over an accused's Charter rights. Rather, this was a dynamic situation where the officers appeared to be more focused on getting to the bottom of the status of the motor vehicle and the possibility of weapons than they were in thinking about the need to advise the accused of his ss. 10(a) and (b) Charter rights immediately at the scene.
- [41] Although not akin to the legal uncertainty of McColman (an unauthorized traffic stop on private property), in this case there is an element of pushing forward in a haphazard fashion to quickly search the vehicle. Cst. Jackson should have acted with more deliberation and prudence than was evident in the way he conducted this investigation.
- [42] All that said, notwithstanding the cumulative nature of the breaches, given the circumstances in which they occurred, the breaches do not rise to the level of something that requires this Court to dissociate itself from the officer's actions in this case. Overall, when I consider the ss. 9, 8, and 10(a) and (b) breaches cumulatively and contextually, I conclude that the overall conduct falls between the lower to mid-point of the culpability scale. Accordingly, the first line of inquiry pulls only slightly in favour of exclusion.

ii. Impact of the Breach the Charter-protected Interests of the Accused

- [43] This branch of the evaluative inquiry focuses on the seriousness of the state's Charter-infringing conduct from the perspective of the accused. This involves examining the interests engaged by the rights, and the extent to which the breaches impacted upon those interests. In Bottomley, Justice Devlin succinctly outlined the approach as follows:
- [78] The court must identify the interests protected by the relevant Charter rights and evaluate "how seriously the breaches affected those interests": see *Tim* at para. 90. Under this analysis, the court must examine the interests engaged by the infringed right and the degree to which the Charter infringement impacts or intrudes upon those interests: *Grant* at para. 77. Yet, as Ker J. noted in *Moonie*, this line of inquiry "encompasses not only the impact of the breach on the accused but also focuses on society's interest in respect for Charter rights": *Moonie* at para. 98.
- [79] Impacts of a breach on an accused's Charter-protected interests, like a breach's seriousness, must be situated on a spectrum. Impacts can range from those "that are fleeting, technical, transient, or trivial, to those that are profoundly intrusive or that seriously compromise the interests underlying the rights infringed": *R. v. Berry*, 2022 BCCA 389 at para. 244, quoting from *Tim* at para. 90. For instance, a search that intrudes on an area in which the individual reasonably enjoys a high expectation of privacy, or that demeans their dignity, is more serious than one that does not: *Grant* at para. 78. Placing the impacts of a breach on a spectrum is important because the more serious the impact on the accused's protected interests, the greater the risk that the admission of the evidence may send a signal that Charter rights count for very little, bringing the administration of justice into disrepute: *Grant* at para. 76.
- [80] Although they often work in tandem, and call for a similar methodology, the first and second lines of inquiry are distinct. The Court recently discussed this point in *McColman*:
- [59] It should be noted at the outset that the first and second lines of inquiry are distinct. The first line of inquiry evaluates the state conduct itself, while the second line of inquiry goes further and assesses the impact of the state conduct on the accused's Charter-protected interests. This Court has noted that "[w]hile the first two lines of inquiry typically work in tandem in the sense that both pull towards exclusion of the evidence, they need not pull with identical degrees of force in order to compel exclusion": *R. v. Le*, 2019 SCC 34, [2019] 2 S.C.R. 692, at para. 141. As noted in *R. v. Lafrance*, 2022 SCC 32, at para. 90, "it is the cumulative weight of the first two lines of inquiry that trial judges must consider and balance against the third line of inquiry when assessing whether evidence should be excluded" (emphasis in original). In certain situations, only one of the first two lines of inquiry will pull towards exclusion of the evidence. State conduct that is not particularly serious may nonetheless heavily impact the accused's Charter-protected interests. Conversely, state conduct that is egregious may minimally impact the accused's Charter-protected interests. Courts must be careful not to collapse the first two lines of inquiry into one, unstructured analysis.

[Emphasis added.]

[44] With these principles in mind, I now turn to an assessment of the particular breaches at issue on this application.

The s. 9 breach

[45] Section 9 of the Charter guards against arbitrary detention. Its purpose is to protect individual liberty from unjustified state interference. As the Supreme Court noted in *Le* at para 152:

Underlying this purpose is an uncontroversial principle that is inherent to a free society founded upon the rule of law: 'government cannot interfere with individual liberty absent lawful authority to the contrary'.

[46] The s. 9 breach at issue occurred when the initial valid motor vehicle stop to check the vehicle ownership transformed into a broader criminal investigation after Cst. Jackson arrived and determined to detain the accused on suspicion of both possession of a weapon for a purpose dangerous and possession of a stolen motor vehicle. While I found that Cst. Jackson had the requisite subjective grounds, they were not objectively reasonable in the circumstances. As a result, Mr. Jeeves' detention was arbitrary, contrary to his s. 9 Charter rights. This is not an insignificant breach, nor is it an egregious breach in the totality of the circumstances. The impact on Mr. Jeeves's s. 9 rights was moderate in the circumstances.

The s. 8 breach search of the vehicle

[47] Section 8 of the Charter holds that the state will not interfere with an individual's right to privacy except to the extent permitted by law. Infringements of s. 8 in circumstances denoting a high expectation of privacy tend to favour exclusion of the evidence, while lesser infringements will not pull as strongly towards exclusion: *Grant* at para. 78; *R. v. Paterson*, 2017 SCC 15 at para. 49.

[48] In this case, Mr. Jeeves had a lower expectation of privacy in his vehicle than he would have had, for instance, in his home or to a personal electronic device like a cellphone or laptop: *R. v. Caslake*, 1998 CanLII 838 (SCC) at para. 34; *Chapman*, at para. 120, citing *R. v. Gagnon*, 2016 SCC 6.

[49] Moreover, while this breach appears to be a consequential one, premised as it is on the s. 9 breach, it nevertheless had a more than moderate impact on the accused's s. 8 rights. It was only as a result of the search of the vehicle and satchel in the vehicle that the drugs and money were located.

[50] In the end, although the accused had a lower expectation of privacy in his vehicle, the result of the search in the circumstances resulted in a not insignificant breach of the accused's s. 8 rights.

The s. 10(a) and (b) breaches

- [51] The purpose of s. 10(a) of the Charter is to ensure that persons who are detained know the reason(s) why they have been detained so they can make appropriate choices about whether to submit to detention, cooperate with the authorities, obtain counsel, and exercise other legal rights. The jurisprudence makes it clear that the purpose of s. 10(b) of the Charter is to provide a detainee with the ability to obtain legal advice relevant to their legal situation. In light of the power imbalance between the state and a detainee, the court must employ a purposive and generous understanding of s. 10(b). The requirement that police effect a detainee's right to consultation with counsel upon detention immediately is meant to ensure that a detainee's decision to cooperate with the police or not is free and informed.
- [52] In the case at bar, the s. 10(a) and (b) breaches in and of themselves, even when considered collectively, had only a minor impact. Although one can imagine that Mr. Jeeves would have experienced stress from not being told of the reason for his stop for less than a minute by Cst. Caruso and then no more than 7 or 8 minutes in not being told why he was under arrest by Cst. Jackson, the lack of information provided to him did not assist the police in gathering other evidence or cause Mr. Jeeves to inadvertently incriminate himself.
- [53] In the result, on this second branch of the evaluative inquiry, taking the sum of the impacts and not the average, I find the overall impact to Mr. Jeeves's rights and interests to be moderate. It was not fleeting, technical, transient or trivial, but it was not profoundly intrusive either: Tim, at para. 91; McColman, at paras. 67-68. I find that the impact of the breaches here moderately pulls in favour of exclusion of the evidence.

iii. Society's Interest in Adjudicating the Case on the Merits

- [54] The third factor to be considered is society's interest in adjudication of the case on its merits. This line of inquiry looks at the infringement from the perspective of the public and asks whether the truth-seeking function of the criminal trial process would be better served by admission or exclusion of the evidence: Grant at para. 79; McColman at para. 69. The court must ask "whether the vindication of the specific Charter violation through the exclusion of evidence extracts too great a toll on the truth-seeking goal of the criminal trial": Grant at para. 82. The following considerations are relevant:
- the reliability of the evidence: Grant at para. 81;
 - the importance of the evidence to the Crown's case: Grant at para. 83; and
 - the seriousness of the offence, though this factor "cuts both ways" Grant at para. 84; Harrison at para. 34.
- [55] Where the nature of the Charter breach undermines the reliability of the impugned evidence (for example, where an accused was effectively compelled to speak to the police), this will militate towards exclusion. On the other hand, where the evidence is highly reliable, such as real evidence, and its existence and reliability is unrelated to the Charter

breaches, and it is essential to the prosecution of serious offences, this will generally militate in favour of admission. Exclusion of relevant and reliable real evidence may undermine the truth-seeking function of the justice system and render the trial unfair from the public's perspective, thus bringing the administration of justice into disrepute: Grant at para 81.

[56] However, admission of real evidence will not be automatic under this branch of the evaluative inquiry simply because the evidence is reliable. Indeed, as Justice Kalmakoff noted in Chapman:

[124] Disrepute to the administration of justice may also result from admitting even highly reliable evidence that deprives the accused of a fair trial or amounts to condonation of unacceptable conduct by the investigatory and prosecutorial bodies. An adjudication on the merits, in a state governed by the rule of law, presupposes an adjudication grounded in legality and respect for longstanding constitutional norms: Le at para 158.

[125] It is also crucial not to allow societal interest in adjudication on the merits to trump all other interests implicated in the s. 24(2) analysis: Paterson at para 56. In practical terms, the third line of inquiry becomes important when one, but not both, of the first two inquiries pushes strongly towards the exclusion of the evidence. If the first and second lines of inquiry make a strong case for exclusion of the evidence, the third line of inquiry will seldom, if ever, tip the balance in favour of admissibility. But if the first two inquiries provided weaker support for exclusion of the evidence, the third inquiry will weigh heavily in favour of admissibility: McGuffie at para 63; Le at para 142.

[Emphasis added].

[57] The kinds of drugs found in possession of the accused are of considerable importance in the calculus of the societal interest, especially the high-potency drugs of fentanyl, cocaine and methamphetamine. Society has a significant interest in seeing the adjudication of cases involving these drugs, particularly fentanyl. It is beyond dispute that this province remains in the grips of an opioid crisis; illegal drugs are a persistent and serious problem in our communities. The extent of this tragedy is well documented and haunting not only from the personal and familial level but the societal level as well. Indeed, the fentanyl crisis in particular is aptly viewed as a scourge on society.

[58] In the case at bar, the evidence in question is highly reliable physical evidence that is vital to the Crown's case. Indeed, the Crown has no case if it is excluded. The evidence was obtained without conscription or any interference with Mr. Jeeves's dignity or bodily integrity. As a result, this line of inquiry pulls very strongly towards admissibility. Admission of the evidence in this case would better serve the truth-seeking function of the criminal trial process and would not damage the long-term repute of the justice system.

iv. The Final Balancing

- [59] As the Supreme Court observed in *Reilly* at para. 2, the balancing contemplated in *Grant* must be conducted only after the court has individually examined each line of the three lines of inquiry and determined the 'pull' on the exclusion or admission of the impugned evidence. My findings for each *Grant* line in the evaluative inquiry on the admissibility of the evidence challenged in this application are set out in the preceding paragraphs.
- [60] As previously mentioned, the balancing exercise is a qualitative one, not one determined by mathematical calculations: *Harrison* at para. 96; *Chapman* at para. 127; *Bottomley* at para. 109. And so, the analysis does not reduce to a 'two-strikes-and-the-evidence-is-out' formula: *Bottomley* at para. 109, citing *R. v. Omar*, 2018 ONCA 975 at para. 119 (per Brown J.A., dissenting, *aff'd* 2019 SCC 32) and *Choi* at para. 64.
- [61] As the Supreme Court noted in *Tim* at para. 98, the overarching question in the balancing exercise is the impact of admission or exclusion on the reputé of the administration of justice:
- [98] The final step in the s. 24(2) analysis involves balancing the factors under the three lines of inquiry to assess the impact of admission or exclusion of the evidence on the long-term reputé of the administration of justice. Such balancing involves a qualitative exercise, one that is not capable of mathematical precision (see *Grant*, at paras. 86 and 140; *Harrison*, at para. 36). Each factor must be assessed and weighed in the balance, focussing on the long-term integrity of, and public confidence in, the administration of justice (see *Grant*, at para. 68). The balancing is prospective: it aims to ensure that evidence obtained through a Charter breach "does not do further damage to the reputé of the justice system" (*Grant*, at para. 69). The balancing is also societal: the goal is not to punish the police, but rather to address systemic concerns by analyzing "the broad impact of admission of the evidence on the long-term reputé of the justice system" (*Grant*, at para. 70; see also *Le*, at para. 139).
- [62] In this case, the impact of the s. 9 and s. 8 breaches of Mr. Jeeves's Charter rights were not insignificant. He was deprived of his liberty while detained and then arrested and transported to police cells and released some hours later. His privacy interests were also affected, although they involved a lower expectation of privacy than other circumstances. And while there is a temporal connection to the breaches of his s. 10(a) and (b) Charter rights and the eventual discovery of the drugs in the vehicle as it was all part of the same transaction, it cannot be said that there is a direct causal connection between the s. 10 breaches and the discovery of the evidence. To that end, the lack of a causal connection between the s. 10 breaches and the discover of the drugs and money in the vehicle attenuates the gravity of the situation considerably: *Choi* at para. 98.
- [63] In considering the overall constellation of Charter breaches, I have concluded that the impugned police conduct in this case falls between the lower and mid range on the scale of seriousness. The officers were not acting capriciously or in a groundless manner. This was, as noted previously, a dynamic and rapidly evolving situation occurring within the span of minutes. The conduct of Cst. Jackson fell short of reaching a legal standard that is not always

easy to recognize in the moment of the circumstances like this case: Chapman at para. 129. The evidence obtained through the breaches is highly reliable, physical evidence that is essential to the prosecution of a serious offence and in which there is a significant societal interest in an adjudication on the merits.

- [64] In this case two of the Grant lines pull in favour of exclusion, one slightly and one moderately. The third line pulls heavily in favour of admission. In McColman, the Court concluded as follows:
- [74] When balancing the Grant factors, the cumulative weight of the first two lines of inquiry must be balanced against the third line of inquiry: Lafrance, at para. 90; R. v. Beaver, 2022 SCC 54, at para. 134. Here, the first line of inquiry slightly favours exclusion of the evidence and the second line of inquiry does so moderately. However, the third line of inquiry pulls strongly in favour of inclusion and, in our view, outweighs the cumulative weight of the first two lines of inquiry because of the crucial and reliable nature of the evidence as well as the important public policy concerns about the scourge of impaired driving. On the whole, considering all of the circumstances, the evidence should not be excluded under s. 24(2).
- [65] I reach the same conclusion in this case. The third line of inquiry pulls strongly in favour of admission of the evidence. It outweighs the cumulative weight of the first two lines of inquiry because of the crucial and reliable nature of the evidence as well as the important public policy concerns about the scourge of hard drugs, especially fentanyl, continuing to plague the community. The defence application pursuant to s. 24(2) of the Charter to have the evidence excluded is dismissed.

"Ker J."

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