

CANADA / JUDGMENT

R. v. Khouchaba

2025 BCSC 1487

COURT

Supreme Court of British Columbia

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2025 BCSC 1487 R. v. Khouchaba

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Khouchaba,

2025 BCSC 1487

Date: 20250620

Docket: 41838-2

Registry: Port Alberni

Regina

v.

Victor Khouchaba

Before: The Honourable Justice K. Wolfe

Oral Reasons for Judgment on Charter Voir Dire

Counsel for the Crown:

C. Gibson

Counsel for the Accused:

J. Watt

Place and Date of Hearing:

Nanaimo, B.C.

June 16-19, 2025

Place and Date of Judgment:

Nanaimo, B.C.

June 20, 2025

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[1] These oral reasons have been edited for publication.

[2] THE COURT: These are my oral reasons for judgment on an application brought by the accused, Mr. Khouchaba, alleging breaches of his Charter rights in the context of a criminal prosecution. They have been prepared on an expedited basis. Should either side order a transcript, or should I decide to publish these reasons, I reserve the right to edit for grammar, clarity, style and case citations or references, but the substance of my judgment will not change.

Introduction

[3] On the evening of May 26, 2022, the accused, Mr. Khouchaba, was the sole occupant of a vehicle stopped in an alleyway in Port Alberni by two members of the Port Alberni RCMP, Cst. Kenny and now Cpl. Gudjonson (he was then a constable). The officers testified they initiated a traffic stop of Mr. Khouchaba because his vehicle did not have a clearly visible "N" sign as required by the class 7 driver's licence he held at the time. Both officers conceded they may have had other concurrent concerns.

- [4] Cpl. Gudjonson asked Mr. Khouchaba to produce his licence in order to confirm his identity. As Mr. Khouchaba was rummaging in a bag to locate his licence, Cst. Kenny says he caught a glimpse of what he believed was a small plastic bag with coloured powder in it. Shortly afterward, Cst. Kenny observed a hooked-blade machete wedged between the centre console and the passenger seat. Cst. Kenny relayed this information to Cpl. Gudjonson, who, after asking some additional questions connected to the machete, arrested Mr. Khouchaba for possession of a weapon for a dangerous purpose. The police then searched Mr. Khouchaba, his belongings and the vehicle incident to the initial arrest.
- [5] Based on the evidence the police obtained from the search incident to the initial arrest, Cpl. Gudjonson then arrested Mr. Khouchaba for possession of a weapon for a dangerous purpose (he says for the machete as well as a second knife and a firearm also located in the vehicle), possession of a controlled substance and unauthorized possession of a firearm. Mr. Khouchaba has been charged on a nine-count indictment for firearms and related offences, as well as possession of various controlled substances for purposes of trafficking, including fentanyl.
- [6] At the start of his criminal trial on June 16, 2025, I declared a voir dire to address Mr. Khouchaba's Charter application. Mr. Khouchaba challenges his detention, arguing it was either a ruse from the start or quickly evolved into an arbitrary criminal investigation, breaching s. 9 of the Charter. He says the officers breached his ss. 10(a) and (b) Charter rights either immediately upon detention or when the focus of their investigation shifted. Mr. Khouchaba also argues the officers lacked the requisite grounds to arrest him for possession of a weapon for a dangerous purpose, and failed to inform him of his right to retain and instruct counsel upon arrest, resulting in further breaches of ss. 9 and 10(b). As a result of the alleged s. 9 breaches, Mr. Khouchaba says all subsequent searches of his person, belongings and vehicle were unreasonable searches contrary to s. 8 of the Charter. To the extent the alleged Charter violations are proven or conceded, Mr. Khouchaba intends to seek the exclusion of all evidence arising from this interaction pursuant to s. 24(2) of the Charter.
- [7] Based on how the evidence unfolded before me, the Crown now concedes a breach of Mr. Khouchaba's s. 10(b) rights because he was not advised of his right to retain and instruct counsel on his initial arrest for possession of a weapon for a dangerous purpose. The Crown also concedes a breach of s. 8 arising from the search of the vehicle's trunk. In this regard, the Crown admits there is no evidence it was a valid consent search, and since both officers confirmed the search was to look for camping gear rather than weapons, the Crown admits it was not a lawful search incident to arrest. The Crown denies all other alleged Charter violations.

- [8] Both Cst. Kenny and Cpl. Gudjonson testified on the voir dire, and two books of photographs taken by police (one from the scene and one from exhibit processing) were entered as exhibits on the voir dire. The defence chose not to call any evidence, but admitted, for purposes of the voir dire only, that the firearm is a firearm and the controlled substances are controlled substances.
- [9] This voir dire ruling focuses solely on whether the officers' actions on May 26, 2022 violated one or more of Mr. Khouchaba's Charter rights under s. 9 (to be free of arbitrary detention), s. 8 (to be free of unreasonable search and seizure), and ss. 10(a) and (b) (respectively, to be informed promptly of the reasons for arrest or detention and of the right to counsel). As the Crown has conceded two Charter breaches, arguments and a ruling on s. 24(2) of the Charter will be required before the trial proper can continue. If I find any additional Charter breaches, that may impact the scope of the s. 24(2) arguments. A hearing for the s. 24(2) arguments has now been scheduled for Monday, June 23, 2025. The week of December 15, 2025 is being held by Supreme Court Scheduling for the tentative continuation of the trial, subject to further discussions between counsel and with the Court.

Background

- [10] At 9:26 p.m. on May 26, 2022, Cpl. Gudjonson and Cst. Kenny were patrolling in an unmarked police car in an area of Port Alberni known for drug and other criminal activity. That area is sometimes referred to, both by police and residents, as the "ghetto". At the time, both officers were members of the Port Alberni RCMP Crime Reduction Unit, the primary mandate of which is proactive policing to address prolific offenders and to monitor for and attempt to prevent crimes. The "ghetto" area is one of several locations they regularly frequented while on patrol together.
- [11] I will discuss the circumstances leading to the initial detention and the reasons for the stop in more detail below when addressing the alleged breach of s. 9 of the Charter. In brief, Cst. Kenny ran the licence plate for a vehicle observed to be blocking an alleyway and, as the officers were circling the block, determined the registered owner was from Surrey and was required, as a condition of his licence, to clearly and visibly display an "N" sign. When Cpl. Gudjonson drove back around to where the vehicle had been parked, the officers observed the vehicle moving down the alleyway and they followed it. As neither officer had seen an "N" sign, Cpl. Gudjonson testified he decided to conduct a traffic stop, because the absence of the "N" sign could be an infraction of the Motor Vehicle Act, R.S.B.C. 1996, c. 319 [MVA]. Cpl. Gudjonson initiated the lights on their vehicle to effect the stop and parked behind the other vehicle when it pulled over in the alleyway. It is agreed the officers detained Mr. Khouchaba just before 9:30 p.m.
- [12] Cpl. Gudjonson approached the vehicle first and advised Mr. Khouchaba he had been pulled over to inquire about his "N" sign. There was an exchange about the "N" sign, which Cpl. Gudjonson admits was present in the back window of the vehicle, but lying down rather than clearly visible. When Cpl. Gudjonson asked Mr. Khouchaba to provide his driver's

licence, both officers testified Mr. Khouchaba had some difficulty locating it. They testified he eventually searched in a small bag they each described as a black "man bag" located near the centre gear shift. As Mr. Khouchaba was extracting his licence from the bag to give to Cpl. Gudjonson, Cst. Kenny says he caught a glimpse of what he believed to be coloured powder in a small plastic bag, but he could not be sure.

- [13] Both officers testified that when asked about the bag, Mr. Khouchaba denied having a bag of coloured powder and instead pulled out several empty sandwich-style plastic bags from another compartment of the "man bag" to show them. Cst. Kenny says that as Mr. Khouchaba leaned over to the passenger side to show him the empty bags, Cst. Kenny observed an orange box of Arm & Hammer baking soda in the driver's side door pocket, which raised additional suspicions as he was aware baking soda can be used as a buffering agent for drugs. Cst. Kenny says at this time, he also observed the blade of what appeared to be a hooked-blade knife or machete between the passenger seat and the centre console. Cst. Kenny testified he alerted Cpl. Gudjonson to the existence of the weapon within Mr. Khouchaba's reach.
- [14] Cpl. Gudjonson directed Mr. Khouchaba not to touch the blade and asked him why he had it. When Mr. Khouchaba responded that he had been camping, Cpl. Gudjonson began asking questions about the alleged camping trip. Mr. Khouchaba stated there was camping gear in the trunk and showed Cpl. Gudjonson a cooler in the back seat which the officer testified contained a half-eaten rotisserie chicken and nothing else. I will also address these interactions in more detail below when addressing the alleged s. 9 violations.
- [15] For present purposes, Cpl. Gudjonson testified his exchange with Mr. Khouchaba ultimately did not satisfy him the machete was for camping, and he instead formed the grounds to arrest Mr. Khouchaba for possession of a weapon for a dangerous purpose. Cpl. Gudjonson advised Mr. Khouchaba he was under arrest for that offence and asked Mr. Khouchaba to exit the vehicle. Upon exiting the vehicle, Mr. Khouchaba was placed in handcuffs and Cpl. Gudjonson cautioned him that anything he said could be used against him. Cpl. Gudjonson did not advise Mr. Khouchaba of his rights to counsel. Cpl. Gudjonson did search Mr. Khouchaba incident to arrest; nothing was located. Cst. Kenny testified he was not certain, but believed it took approximately 10 minutes from the start of the traffic stop to Mr. Khouchaba's arrest. He admitted it might have been longer or shorter. Cpl. Gudjonson testified he thought the arrest was made about 15 minutes after the start of the traffic stop.
- [16] As their police vehicle was not equipped to secure or transport prisoners, Cpl. Gudjonson requested a marked police car to attend and assist. Given the nature of the area, and the presence of other persons in the alleyway, Cpl. Gudjonson testified he and Cst. Kenny simply waited with Mr. Khouchaba until another officer, Cst. Engle, arrived in a marked police vehicle approximately 15 minutes later. Cpl. Gudjonson says he and Mr. Khouchaba made "small talk", including about Surrey, and he allowed Mr. Khouchaba to have a cigarette while they waited, but he did not ask further questions related to the investigation. Both officers agreed that while nervous, Mr. Khouchaba was cooperative during their interactions and did

not take any actions or make any statements that could be construed as violent or threatening.

- [17] When Cst. Engle arrived, both officers testified Mr. Khouchaba was secured in the back of the marked police vehicle, but was not transported to cells at that time. Instead, the officers conducted their search of the vehicle while Mr. Khouchaba waited with Cst. Engle. The vehicle search took approximately 30 minutes.
- [18] Cst. Kenny testified he briefly searched the front passenger area as well as a purse on the front passenger seat of the car, before searching the trunk on Cpl. Gudjonson's instructions to look for camping gear. During the earlier interaction, Mr. Khouchaba had indicated the purse belonged to a woman named Ginger he had met while camping, and he was in Port Alberni to return it. Cst. Kenny testified its contents suggested it belonged to a female. Cpl. Gudjonson also searched the purse at some point. It contained some small personal use quantities of drugs, but no weapons. Both officers testified that during their search of the vehicle, a woman who identified herself as Ginger came out of a location near where the vehicles were stopped and requested her purse. Cpl. Gudjonson advised her to wait while they finished their search, and eventually returned the purse to her after seizing the container of drugs.
- [19] Cst. Kenny testified that in his search of the trunk, he found an open safe with various items inside, including prepaid credit cards, a cellphone with a broken screen, sandwich bags and elastic bands. He testified that as he moved the safe to continue his search, a bag underneath it shifted towards him and a .22 calibre bullet fell out. He testified he searched that bag and located a loaded, modified, semi-automatic .22 calibre Ruger Rifle, with a curved "banana" ammunition clip, as well as more loose ammunition. Cst. Kenny testified under the firearm bag was a further blue canvas bag containing, among other things, clothing and a letter addressed to Mr. Khouchaba at a Surrey address. Cst. Kenny testified that at the bottom of the trunk, he did locate some camping-related equipment, such as a tent and a tarp. Cst. Kenny testified he advised Cpl. Gudjonson of the presence of the firearm but did not seize any of the items he located; he left seizure decisions to Cpl. Gudjonson.
- [20] While Cst. Kenny was searching the trunk, Cpl. Gudjonson searched the interior of the car, starting with the driver's side area. He testified he located a glass bong under the driver's seat, the box of baking soda in the driver's side door, a bag of marijuana between the driver's seat and the door, and a second knife in a sheath wedged between the driver's seat and the centre console. In the centre console, Cpl. Gudjonson testified he located a digital scale with what he believed was drug residue; he also located cell phones in the car. In his search of the black "man bag", Cpl. Gudjonson located bags containing various substances that appeared to be drugs. For purposes of this voir dire, the defence admits the substances were later confirmed to be fentanyl and three different benzodiazepines (a combination of fentanyl and other drugs). Cpl. Gudjonson seized and secured various items as exhibits in the police vehicle he and Cst. Kenny were using.

- [21] Based on the evidence found during the search of the vehicle, Cpl. Gudjonson arrested Mr. Khouchaba for possession of a weapon for a dangerous purpose, possession of a controlled substance and unauthorized possession of a prohibited firearm. He was warned and read his Charter s. 10 rights from a police-issued card. Cpl. Gudjonson testified Mr. Khouchaba nodded that he wished to contact counsel.
- [22] Mr. Khouchaba was then transported to the RCMP detachment by Cst. Engle, followed by Cpl. Gudjonson and Cst. Kenny, arriving just over an hour after his initial stop. Cpl. Gudjonson completed the book-in process, which took approximately another 10 minutes, and then offered to facilitate access to counsel. He also completed what he called a "late entry" in his notebook. Cpl. Gudjonson testified Mr. Khouchaba asked if he would be held or released and when Cpl. Gudjonson indicated he would likely release Mr. Khouchaba on an undertaking, Mr. Khouchaba advised he would wait to speak to counsel after his release. Cpl. Gudjonson then secured the exhibits, completed the paperwork for the undertaking, and released Mr. Khouchaba at around or just after midnight. Cst. Kenny drove him back to his vehicle, which had been secured and left in the alleyway. On their next shift the following day, Cst. Kenny assisted Cpl. Gudjonson with processing the exhibits.

Analysis

- [23] At the outset of my analysis, I note that Mr. Khouchaba's notice of application indicates he will seek to exclude "all statements" he made during his interactions with the officers on May 26, 2022. In discussions with counsel, I sought to clarify the statements in issue and whether there were any voluntariness concerns to be addressed. The Crown subsequently confirmed it does not seek to tender any statements made by Mr. Khouchaba at the trial proper, and, on that basis, both counsel agreed this voir dire need not engage with voluntariness issues.
- [24] Defence counsel also generally impugns the credibility and reliability of both officers' evidence, pointing to various differences in their accounts of what happened on May 26, 2022, as well as what the defence characterized as "new details" not recorded in the officers' handwritten or typed notes, that only seemed to emerge, particularly for Cpl. Gudjonson, when being pressed in cross-examination. Defence counsel says these inconsistencies should cause the Court concern, both in assessing the officers' evidence about their true motivations for the initial stop of Mr. Khouchaba and in deciding if the Crown has established the requisite reasonable and probable grounds to support Mr. Khouchaba's initial arrest.
- [25] I accept that credibility and reliability are important considerations, however it is also trite law that credibility and reliability are not all or nothing propositions. A Court may accept certain aspects of a witness' evidence, while rejecting others, or find a witness credible or reliable in one respect, but not another.

- [26] I accept there were differences in some of the details of the officers' testimony, including in relation to the lighting conditions, when the vehicle search was commenced, the extent of Mr. Khouchaba's nervousness and what specific conversations occurred. However, with respect to critical evidentiary matters, I found the officers' evidence was generally consistent.
- [27] On the whole, I found Cst. Kenny and Cpl. Gudjonson to be credible and reliable witnesses. I found them candid in their testimony. They made appropriate concessions, offered cogent rationales or clarifications where they did not agree with propositions put to them by both counsel, and admitted when they did not have specific recollections. In my view, some of the differences in the details of their testimony can be explained by their respective roles during the interaction with Mr. Khouchaba. There is no question that Cpl. Gudjonson was the lead officer during these events, responsible for making the majority of the decisions and undertaking the bulk of the interactions with Mr. Khouchaba. In contrast, Cst. Kenny was in a supportive or "cover" role that evening, and as a result, I accept his focus was different.
- [28] I also agree with Crown that after the passage of three years, some minor differences are to be anticipated between two individual witnesses who would likely have had different perspectives on the same incident in any event. In fact, complete alignment on all details could raise more concerns, as it could suggest witnesses engaged in improper conduct in preparing for trial. I do not have such concerns here. To the extent the defence has raised specific questions about aspects of either officer's testimony that go to a material issue I must decide, I will address them as part of my analysis of that issue.
- [29] I turn then to a consideration of the alleged Charter violations in this case.

Charter s. 9: was Mr. Khouchaba's detention arbitrary and were there reasonable grounds for his arrest?

- [30] Section 9 of the Charter protects against arbitrary detention and arrest. Mr. Khouchaba advances three s. 9 arguments, each arising at a different point in his interactions with the police. First, the defence says the initial detention for the traffic stop at approximately 9:30 p.m. was arbitrary because it was not a legitimate MVA stop. Second, if there was a legitimate MVA stop initially, when the focus of the investigation shifted from MVA issues to possible criminal activity, the continuing detention became arbitrary. Third, the defence says the Crown has not established reasonable and probable grounds for Mr. Khouchaba's arrest for possession of a weapon for a dangerous purpose, which is a further violation of s. 9. While the first and second arguments are connected, the defence says even if the Court is not satisfied the detention gives rise to a breach, it is still open to the Court to find a breach as a result of the arrest.

The traffic stop

- [31] As indicated, the alleged traffic stop occurred while Cpl. Gudjonson and Cst. Kenny were on patrol as part of the Crime Reduction Unit. At that point, Cpl. Gudjonson had been a member of the RCMP for more than 13 years and a member of the Crime Reduction Unit for about a year. Cst. Kenny joined the RCMP in October 2016, and the Crime Reduction Unit in November 2021. The two officers were partnered together within their unit and often patrolled the "ghetto" area. They knew it to be a high crime area, including for drug-related and violent activities.
- [32] Cpl. Gudjonson was driving the police vehicle; Cst. Kenny was seated in the front passenger seat, with a mobile data terminal (MDT) on his lap (it was not mounted in that police vehicle). Both officers testified that as they drove down Burde Street, they observed a grey Ford sedan parked on Burde Street, near where it intersects 4th Avenue, blocking the entrance to the alleyway behind 4th Avenue. The vehicle was stationary but Cpl. Gudjonson testified its engine was running and its lights were on. Cst. Kenny testified that as he and Cpl. Gudjonson drove by, he observed the driver to be the only occupant, but he did not get a good look at the individual.
- [33] Cst. Kenny testified that because the vehicle was blocking the alleyway, he ran the licence plate for the vehicle in the MDT as Cpl. Gudjonson circled the block. While he conceded in cross-examination that the location of the vehicle in the "ghetto" also informed his decision to run the plates, he maintained, and I accept, that he would have run the plates on any vehicle blocking an alleyway in any location. The information from the MDT confirmed the vehicle was registered to Mr. Khouchaba, who had a residential address in Surrey, British Columbia, and held a valid class 7 driver's licence at that time. Cst. Kenny advised Cpl. Gudjonson of the registered owner's name and driver's licence status and that he lived in Surrey.
- [34] It is common ground that drivers with class 7 driver's licences are subject to certain restrictions and conditions under the MVA and its regulations. One such restriction is the requirement to have an "N" sign "clearly visible and prominently displayed" on the rear of the vehicle to signify status as a "novice" driver: Motor Vehicle Act Regulations, B.C. Reg. 26/58, s. 30.10(4). It was not disputed that "N" signs may be placed in various locations, both inside and outside a vehicle, but the statutory provision expressly requires the "N" sign to be "clearly visible" and "prominently displayed". Section 25(15) of the MVA makes it an offence to violate a restriction or condition prescribed in respect of a driver's licence.
- [35] Both officers testified that when they turned back onto Burde Avenue, the vehicle had moved from its previous location and was now driving down the alleyway toward a location known to the Port Alberni RCMP for various drug and other criminal activities, and at which they had both previously attended calls. Both officers testified that they did not observe a visible "N" sign on the rear of the vehicle. Since the failure to display an "N" sign when required could be an MVA infraction, Cpl. Gudjonson testified he decided to conduct a traffic stop to

check for the "N" sign and identify the driver. I find that while Cpl. Gudjonson advised Cst. Kenny of his intention to stop the vehicle because the "N" sign was not visible, the decision to conduct the stop was made by Cpl. Gudjonson. Both officers testified that Cpl. Gudjonson activated the police lights when they were behind Mr. Khouchaba's vehicle in the alleyway in order to effect the stop. As indicated, it is agreed Mr. Khouchaba was detained just before 9:30 p.m.

- [36] Cpl. Gudjonson testified the vehicle pulled over into a pull-out area in the alleyway and he stopped the police vehicle behind it. Cpl. Gudjonson exited the police vehicle first and approached the vehicle. Cst. Kenny was a bit delayed joining him as he was dealing with the MDT and other equipment. Cpl. Gudjonson testified that as he approached the vehicle on the driver's side, and consistent with his practice in all traffic stops, he touched the rear bumper in order to leave his fingerprints on the car in the event something should happen. Cpl. Gudjonson further testified that as he walked up, he realized Mr. Khouchaba was filming him with his cell phone out the driver's side window. On the evidence before me, I find Cpl. Gudjonson began speaking with Mr. Khouchaba before Cst. Kenny approached on the passenger side.
- [37] As noted, Cpl. Gudjonson testified he advised Mr. Khouchaba he had been stopped because of the "N" sign. He admitted on the voir dire that Mr. Khouchaba responded he had an "N" sign and directed Cpl. Gudjonson to look in the back window of the vehicle. Cpl. Gudjonson also admitted that when he leaned back to check, there was an "N" sign lying down in the back window. Cpl. Gudjonson did not mention the existence of the "N" sign in any of his notes, or prior to his testimony at trial. When pressed, Cpl. Gudjonson maintained the "N" sign was not clearly visible to anyone driving behind the vehicle. I accept Cpl. Gudjonson's evidence that while the "N" sign was present in the vehicle, it was not clearly visible or prominently displayed. In my view, the defence's focus on details added in cross-examination about what was around the "N" sign did not undermine the material aspect of the officer's testimony that it was not clearly visible from the rear of the vehicle as required by the MVA and its regulations.
- [38] I also accept that Cst. Kenny testified in cross-examination he was not aware there was an "N" sign in the vehicle, and did not recall any conversation about the "N" sign, but I find the evidence provides a logical explanation for this. I find Cst. Kenny joined his partner at the car around the time Cpl. Gudjonson asked Mr. Khouchaba for his driver's licence, after their exchange about the "N" sign was already complete.
- [39] Both officers testified, and I accept, that in addition to checking on the "N" sign, a necessary part of the traffic stop was confirming the identity of the driver. This is because the requirement to display an "N" sign might not apply if someone other than the registered owner was driving.

- [40] In *R. v. Woody*, 2018 BCSC 2275, Justice Riley (as he then was) confirmed that, by its nature, a vehicle stop involves a detention of a motorist (at para. 33). The question then is whether the detention is arbitrary contrary to s. 9 of the Charter. A detention will not be arbitrary if it is authorized by law, either under statute or the common law. As a result, it is necessary to determine the basis for the stop. At paragraphs 34-35 of *Woody*, the Court summarized the applicable principles:
- [34] If the officer's basis for stopping the vehicle relates to enforcement of traffic or vehicle safety laws, then the resulting detention may be authorized or justified by the Motor Vehicle Act, R.S.B.C. 1996 c. 319. To be more precise, there are two different bases on which a vehicle stop related to enforcement of traffic or vehicle safety laws will be authorized under the Motor Vehicle Act. On the one hand, where the vehicle stop is based on an observed traffic infraction or violation of the Motor Vehicle Act or its regulations, then the resulting "detention" is authorized under the Act and therefore does not infringe s. 9 of the Charter: *R. v. Kaddoura*, 2009 BCCA 113 at para. 12-13. On the other hand, where the vehicle stop is a random stop to enforce traffic or vehicle safety laws, the detention of the driver is arbitrary under s. 9 of the Charter, but justified as a reasonable limit under s. 1 of the Charter so long as the actions of the police fit within the pressing and substantial objective of promoting traffic safety: *R. v. Nolet*, 2010 SCC 24 at para. 22.
- [35] If the officer's basis for stopping the vehicle does not relate to enforcement of traffic or vehicle safety laws, but rather relates to a criminal investigation, then the officer must have some independent authority for effecting a "detention" of the driver or other occupants of the vehicle. The officer may have reasonable suspicion to justify an investigative detention in respect of a crime as discussed in *R. v. Clayton*, 2007 SCC 32, or the officer may have reasonable grounds to justify an arrest for an offence as discussed in *R. v. Storrey*, [1990] 1 S.C.R. 241. In either case, it makes little difference whether the police are dealing with a suspect on foot or in a vehicle. Where the police have reasonable suspicion to support an investigative detention, or reasonable grounds to support an arrest, the interference with the suspect's liberty is authorized and not arbitrary, whether the suspect is on foot or in a car: *R. v. Liang*, 2007 YKTC 18 at para. 58. However, where the police have no such reasonable suspicion or reasonable grounds, they cannot simply stop a vehicle and detain the driver or occupants for some general inquisition into possible criminal wrongdoing.
- [Emphasis added.]
- [41] The officers' consistent evidence, which I accept, was that it was Cpl. Gudjonson's decision to conduct the traffic stop. Accordingly, my analysis focuses on Cpl. Gudjonson's basis for initiating the stop.
- [42] Cpl. Gudjonson testified that his primary purpose for conducting the traffic stop was to check the "N" sign and identify the driver, since the registered owner was required to display an "N" sign and neither officer had observed one on the vehicle. He testified the MVA was the source of his authority for the traffic stop. Section 73 of the MVA provides authority for

police to require a driver of a motor vehicle to stop the vehicle. Both officers were candid when testifying that in addition to the MVA infraction, they might have had other concerns and were alive to the potential that, particularly given the location, the driver of the vehicle might have been involved in other criminal activity, such as drugs.

- [43] The Crown says the detention here was not a "ruse", in the sense of Cpl. Gudjonson using the MVA authority for the improper purpose of conducting a drug investigation. The Crown says that while the evidence is clear that the officers were thinking about other purposes, particularly given their role as members of a proactive policing unit in a known drug area, they nonetheless had a valid basis for conducting a traffic stop as a result of the observed infraction of the MVA from the failure to clearly and visibly display the "N" sign on the rear of the vehicle. The Crown says the officers' actions in stopping the vehicle to check the identity of the driver and the status of the "N" sign are consistent with the stated MVA basis for the stop. Relying on Woody, the Crown says this is a scenario where the observed infraction of the MVA establishes a valid basis for the traffic stop which is not an arbitrary detention. The Crown says the presence of other suspicions or concerns does not invalidate that independent basis for the traffic stop: Woody at para. 43.
- [44] The defence says when the circumstances are considered in totality, it is clear the traffic stop was a "ruse" and the officers' true motivations were to investigate Mr. Khouchaba for possible drug-related activity. The defence challenges the officers' stated basis for the stop, and with it, the officers' credibility. The defence says both officers admitted they were members of a proactive policing unit, patrolling in an area known for drug transactions, and Mr. Khouchaba's presence in that area at night, given his residence in Surrey, raised suspicions. The defence points to what it characterizes as inconsistencies in the officers' evidence about the lighting conditions and use of flashlights, as well as the officers' lack of focus on the "N" sign when approaching the vehicle. I have already addressed above the issue of Cst. Kenny's lack of knowledge that there was an "N" sign found. As for the officers' focus, in my view, having not seen a clearly visible and prominently displayed "N" sign on the rear of the vehicle when they parked behind the vehicle (as required by the MVA), I do not consider it unreasonable for the officers to have been focused on other matters as they approached the vehicle, such as Mr. Khouchaba's filming and the general security of the situation. I reject the defence's contention that this demonstrates the MVA stop was a simple pretext.
- [45] In Woody, the Court held that concerns about possible misuse of MVA enforcement powers are attenuated when a police officer stops a vehicle in connection with an observed infraction of traffic safety laws: Woody at para. 43. The infraction, or perceived infraction, provides an independent basis for stopping the vehicle and the fact that the officer may have had additional concerns or interests does not invalidate that independent basis for stopping the vehicle, absent a true "ruse". As noted at para. 35 of Woody, a vehicle stop in connection with an observed infraction is not arbitrary, and thus does not violate s. 9: R. v. Kaddoura, 2009 BCCA 113 at paras. 112-113.

- [46] In this case, the basis for the stop, as testified to by both officers, was to check the identity of the driver and ensure they were abiding by the restrictions on their licence, which for the registered owner, included a requirement to prominently display a visible "N" sign. Both officers testified they did not see a visible "N" sign on the rear of the vehicle. I do not find that evidence was shaken in cross-examination. As Cst. Kenny testified, if the driver had not been the registered owner, but rather a fully licensed driver, the apparent failure to display the "N" sign would not have constituted an infraction. It is clear that police have the authority to stop for purposes such as checking licensing and registration, as well as compliance with licensing requirements: *R. v. Nolet*, 2010 SCC 24 at para. 25.
- [47] As explained in *Woody*, drawing the line between stops based upon enforcement of traffic or vehicle safety laws, and stops based upon criminal investigation is challenging, including because police officers may have a mix of reasons or concerns at play and are also facing dynamic and rapidly unfolding events: *Woody*, at paras. 39-41. I accept that the evidence here supports the notion that both officers had other concerns and reasons for being suspicious of Mr. Khouchaba's presence in the "ghetto" that evening. But considering the evidence as a whole, I find that Cpl. Gudjonson had observed an infraction of the requirement to have an "N" sign clearly visible and prominently displayed on the rear of the vehicle. I find that observed infraction provides an independent basis for stopping the vehicle. The fact that Cpl. Gudjonson or Cst. Kenny had additional concerns or interests does not invalidate that independent basis for the stop, and as in *Woody*, does not render the stop arbitrary in a manner that breaches s. 9 of the Charter.

The shift in investigative focus

- [48] There is no dispute that once Cpl. Gudjonson initiated the traffic stop on May 26, 2022, Mr. Khouchaba was detained and he remained detained, as that term is explained in *R. v. Grant*, 2009 SCC 32 at para. 44 and *R. v. Suberu*, 2009 SCC 33 at paras. 21-25, until his arrest (a different form of detention). Both officers agreed with this proposition and the Crown does not suggest otherwise. I have found the initial detention was authorized as a valid traffic stop pursuant to the MVA.
- [49] However, both officers also recognized, and, in my view, the Crown appropriately conceded, that at a certain point in the officers' interactions with Mr. Khouchaba, the focus shifted away from MVA matters and towards a different kind of investigation. The exchanges turned towards the machete, camping locations and the presence or absence of camping gear. As defence counsel submitted, Cpl. Gudjonson described himself as being engaged in a "new" investigation.
- [50] There is disagreement about the exact point at which the shift occurred. The defence says it was as soon as Mr. Khouchaba directed Cpl. Gudjonson to his "N" sign in the back window. The Crown concedes that by the time questions were being asked about camping and the machete, there was a shift, but says the MVA traffic stop was still clearly in progress until at least the point when Cpl. Gudjonson was in a position to examine Mr. Khouchaba's driver's

licence. This occurred around the same time, or perhaps slightly after, the conversation about the bag with the coloured powdery substance. Cst. Kenny testified, and I accept, that he saw the machete and alerted Cpl. Gudjonson to it, within a minute of the exchange about the empty sandwich bags. In my view, it is neither necessary, nor possible on the evidence before me, to pinpoint an exact moment at which the investigation shifted. I accept that by the time Mr. Khouchaba began to answer subsequent questions about camping, the focus had shifted. The more important issue is what authority, if any, there was to continue to detain Mr. Khouchaba at that point.

- [51] The defence says there was no such authority and the continued detention was in breach of s. 9 of the Charter. The Crown initially submitted the Court need not focus on s. 9 because Mr. Khouchaba was already detained, but in reply, suggested the continuing detention was an investigative detention, which could be justified on the basis of "reasonable suspicions", citing *R. v. Mann*, 2004 SCC 52. Neither counsel provided authorities addressing a similar circumstance, nor were anything more than cursory submissions made about the application of the reasonable suspicion standard to the facts of this case in the context of a s. 9 challenge.
- [52] In *Woody*, Riley J. (as he then was) accepted that where an officer stops a driver for reasons unrelated to traffic or vehicle safety, the officer must have either reasonable suspicion to justify an investigative detention or reasonable grounds to justify an arrest: *Woody* at para. 35. If either are present, the detention will be authorized and not contrary to s. 9. The Court also accepted that a traffic stop is dynamic and "things can unfold quickly", with the result that "a stop that starts as a traffic or vehicle safety stop might sometimes develop or evolve into a criminal investigation": *Woody* at para. 41. Further, the Court held that "additional, developing suspicions about possible criminal activity did not undermine the basis for the stop or render the stop invalid": *Woody* at para. 45. However, in *Woody*, the entire traffic stop was exceedingly brief (less than one minute). The Court found that because the officer testified he had asked the accused where he was coming from for the express purpose of inquiring into suspicious activity, he had gone beyond the limits of his MVA authority. However, the Court did not address this as a breach of s. 9. Instead, the Court found only a breach of s. 10.
- [53] A somewhat similar factual situation appears to underlie the decision in *R. v. Jeeves*, 2025 BCSC 133. While that published decision concerns Justice Ker's s. 24(2) analysis, she does refer to her earlier unpublished decision finding breaches of the accused's Charter rights, including s. 9. Justice Ker summarizes her earlier findings and some of the background. Of note, the earlier decision found that while the initial stop was a valid motor vehicle stop, "the complexion of the detention changed immediately when Cst. Chad Jackson attended the scene, took over the investigation, and eventually arrested Mr. Jeeves" for, among other things, possession of a weapon for a dangerous purpose: *Jeeves* at para. 4. Cst. Jackson arrested Mr. Jeeves after being advised of and directed to a collapsible baton that had fallen out of the driver's side of the vehicle: *Jeeves* at para. 11. Justice Ker states that she found

while the initial detention did not violate s. 9 of the Charter, Cst. Jackson's "approach to the matter did": Jeeves at paras. 4, 11.

- [54] The published decision in Jeeves does not clearly set out what it was about Cst. Jackson's approach that "immediately" transformed the traffic stop into a criminal investigation. However, at para. 36, Ker J. explains that she found the officer had subjective grounds to arrest and detain the accused for possession of a weapon, but the objective grounds were lacking when the totality of the circumstances was considered. Justice Ker found the officer was "simply acting upon a hunch" when he arrested the accused: Jeeves at para. 36. This paragraph, along with paragraphs 11 and 37, suggests the Court's s. 9 analysis focused on reasonable and probable grounds for the arrest that followed the shift in the investigation, rather than on whether the continued detention itself, after the shift to a criminal investigation, was arbitrary. While the total detention of nine minutes from initial stop to second arrest in Jeeves was shorter than the approximately 10-15 minutes the officers estimated in the present case, it was clearly longer than the stop in Woody, suggesting there was some period of detention after the focus of the investigation shifted.
- [55] In my view, and in the absence of comprehensive submissions on the proper analytical framework or relevant authorities, I consider it appropriate to follow the approach taken in Jeeves, such that, after the investigative shift away from MVA matters, the focus of my s. 9 analysis is on whether Cpl. Gudjonson had reasonable and probable grounds to arrest Mr. Khouchaba. Although the timeframes are not precisely defined in this case, on the evidence before me, I am not satisfied that the time period between the shift in investigative focus and Mr. Kouchaba's arrest was so lengthy that it requires an independent s. 9 analysis of the detention.
- [56] If I am incorrect on the approach that should be applied, then I accept the Crown's submission, supported by Woody, that the appropriate standard to apply to any investigative detention that proceeded the arrest would be one of reasonable suspicion: Mann at para. 45. Reasonable suspicion, like reasonable and probable grounds to believe, must be "grounded in objective facts", but it is a "lower standard, as it engages the reasonable possibility, rather than probability, of crime": R. v. Chehil, 2013 SCC 49 at para. 27. It will not be sufficient if the suspicion held by police amounts merely to a "generalized" suspicion; there must be something more specific to the person and circumstances at issue: Chehil at paras. 28-31. Reasonable suspicion must be assessed against the totality of the circumstances. The inquiry into an officer's grounds for reasonable suspicion must be grounded in common sense and practical, everyday experience, not assessed in isolation, and must consider both what police were aware of at the relevant time, and an officer's experience and training: Chehil at paras. 29, 34, 47. See also R. v. Stairs, 2022 SCC 11 at para. 68.
- [57] The present case involved an evolving traffic stop, where an intervening event - namely, Cst. Kenny's identification of an unsheathed, edged weapon within arms' reach of a driver in a vehicle located in a high crime area - led Cpl. Gudjonson to begin to ask preliminary questions about the machete in an attempt to understand the changing situation before him

and the risk that may be confronting him and public safety. I am mindful of the comments in Woody (at para. 57) that the Court must be wary of holding an officer's conduct to a standard of perfection with the benefit of perfect judicial hindsight. Allowing for some degree of latitude in respect of how Cpl. Gudjonson was required to carry out his duties when confronted with the new information about the presence of the machete, and what he quickly considered to be an unsatisfactory explanation, I find that the totality of the circumstances supports the existence of a reasonable suspicion that Mr. Khouchaba could be in possession of the machete in connection with a possible criminal offence.

The subsequent arrest for possession of a weapon for a dangerous purpose

[58] There is no dispute that the Crown bears the onus of establishing that the arrest of Mr. Khouchaba for possession of a weapon for a dangerous purpose was lawful. If Crown does not meet its burden, then Mr. Khouchaba's s. 9 Charter rights were violated.

[59] The lawfulness of an arrest depends on whether the requirements of s. 495 of the Criminal Code, R.S.C. 1985, c. C-46 [Code], were met and, in this case, whether there were reasonable and probable grounds for a warrantless arrest within the meaning of that provision. Section 495 of the Code provides:

495(1) A peace officer may arrest without warrant

- (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence,
- (b) a person whom he finds committing a criminal offence, or
- (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

[60] Cpl. Gudjonson was the arresting officer. While Cst. Kenny was present for the traffic stop and subsequent interaction with Mr. Khouchaba, I accept that it was Cpl. Gudjonson who made the ultimate decision to arrest. Accordingly, my analysis again centres on Cpl. Gudjonson's asserted grounds for the arrest and what he knew when he made the decision to arrest. Cst. Kenny's evidence of his knowledge and participation in the events is only relevant to the grounds for arrest if it was communicated to or otherwise known by Cpl. Gudjonson at the time he made the decision to arrest: *R. v. Harms*, 2020 BCCA 242 at para. 45; *R. v. Jir*, 2010 BCCA 497 at para. 26.

- [61] For the arrest of Mr. Khouchaba to have been lawful, Cpl. Gudjonson must subjectively have had reasonable and probable grounds on which to base the arrest. In addition, those grounds "must be justifiable from an objective point of view", in that "a reasonable person placed in the position of the police officer must be able to conclude that there were indeed reasonable and probable grounds for arrest": *R. v. Storrey*, [1990] 1 S.C.R. 241 at 250-251. This is often referred to as the Storrey test.
- [62] The reasonable and probable grounds standard requires a reasonable belief that an individual is connected to the offence. A reasonable belief exists when "there is an objective basis for the belief which is based on compelling and credible information": *R. v. Beaver*, 2022 SCC 54 at para. 72(6). In other words, there must be a "reasonable or credibly based probability": *R. v. Glendinning*, 2019 BCCA 365 at para. 31. The standard of "reasonable and probable grounds" is higher than that of "reasonable suspicion" but it does not require that police establish either a *prima facie* case for conviction or that the offence was in fact committed on a balance of probabilities: *R. v. Fong*, 2023 BCCA 196 at para. 21; *Glendinning* at para. 31.
- [63] The Crown says Cpl. Gudjonson clearly testified to his grounds for arrest, which included the fact that Mr. Khouchaba was an unknown individual, not resident in Port Alberni, in a high crime area at night, with an unsheathed weapon wedged between the passenger seat and the centre console, within arms' reach of Mr. Khouchaba as the driver. The Crown says the officer described the weapon as being visible and readily accessible for offensive or defensive purposes. While the Crown notes that Cpl. Gudjonson conceded a machete can be used as a tool for camping, the Crown says the definition of a weapon in the Code is broad enough to include items like the machete, given that it can be used to cause injury and / or to threaten and intimidate.
- [64] In terms of its use for a dangerous purpose, the Crown says there were both subjective and objective reasons why Cpl. Gudjonson did not accept the camping explanation, including the absence of visible camping equipment and the fact that Mr. Khouchaba's story did not make sense, in light of his inability to articulate where he had been camping or to provide any details about the camp site. In the totality of the circumstances, and taking into account Cpl. Gudjonson's previous experience with machetes being used as weapons, the Crown says Cpl. Gudjonson's subjectively held belief was objectively reasonable. The Crown notes the standard of reasonable and probable grounds does not require it to establish a *prima facie* case or even that an offence was committed on a balance of probabilities. In the circumstances, the Crown says the standard has been met.
- [65] The defence says the Crown has not established either the requisite subjectively held belief or objectively reasonable grounds. In essence, the defence says what Cpl. Gudjonson acted on in this case was a mere hunch or intuition about what the machete could possibly be used for, which is insufficient to establish reasonable and probable grounds. The defence says there was no compelling and credible evidence that Mr. Khouchaba possessed the machete for a "defensive or offensive purpose", noting that is a detail only added by Cpl.

Gudjonson in his testimony on the voir dire.

- [66] The defence pressed Cpl. Gudjonson on the location of the handle in cross-examination and invited the Court to find, based on the photographs from the scene, that the angle of the blade when wedged between the passenger seat and the centre console was insufficient to allow the handle to be sticking up. There are no photographs in evidence of the placement of the handle between the passenger seat and the centre console and in my view, the defence did not undermine Cpl. Gudjonson's evidence that the handle was protruding at least to some extent. I am satisfied the handle was in a position where it could have been accessed by the driver.
- [67] The defence notes further the officers did not have any information from the search of the vehicles plates to suggest there were police files associated to Mr. Khouchaba or the vehicle that would give rise to a cause for concern, such as involvement in criminal or violent activities or drugs, or any suggestion that the driver's licence was suspended or the driver was prohibited from driving. The defence says there was also nothing about Mr. Khouchaba's demeanour, actions or words during the interaction that could support objective grounds for the arrest. He did not reach for or make a motion for the machete, and was not "walking around with it downtown" in a way that would cause concern. Considered as a whole, the defence says the circumstances simply do not support reasonable and probable grounds for the arrest.
- [68] I have already indicated I found Cpl. Gudjonson to be a generally credible witness. I accept that, based on what he observed of the machete, his previous knowledge and experience with files where similar items had been used as weapons for dangerous purposes, and the fact that the exculpatory explanations provided did not satisfy him that Mr. Khouchaba possessed the machete for camping-related purposes, he subjectively had reasonable grounds to arrest. As just one example, in my view, Cpl. Gudjonson posed a very reasonable question in his testimony when he asked why the machete was not located in the trunk with the other camping equipment if that was truly what it was for; why was it readily accessible from the driver's seat?
- [69] I also accept Cpl. Gudjonson's evidence that the machete was not sheathed, was wedged between the passenger seat and the centre console within arms' reach of the driver, and that its handle was sticking up between the seat and the centre console in a manner that would make it readily accessible for use. In my view, all of these factors support objective grounds for belief that there was a credibly based probability the machete could be used as a weapon for a dangerous purpose. While I accept that a machete can be a tool, in my view, defence urged on the Court too high a standard when defence suggested Cpl. Gudjonson needed to be satisfied Mr. Khouchaba was going to act offensively or defensively in using the machete as a weapon. In my view, on the totality of the circumstances known to Cpl. Gudjonson at the time of the arrest, a reasonable person with comparable knowledge, training and experience would have considered those grounds justifiable: Beaver at para. 72(3); Fong at para. 38.

[70] As a result, I find there were reasonable and probable grounds for Mr. Khouchaba's arrest and the arrest was lawful.

Charter s. 8: Were the searches of Mr. Kouchaba's person, belongings and vehicle unreasonable?

[71] Section 8 of the Charter protects individuals from unreasonable search and seizure; its focus is protecting people from unjustified intrusions on their privacy interests. Where the search at issue is a warrantless search, the law presumes that search to be unreasonable. The Crown bears the burden of demonstrating, on a balance of probabilities, that the search is reasonable within the meaning of s. 8 of the Charter: namely, that the search was authorized by law, the law was reasonable and the search was carried out in a reasonable manner: *R. v. Tim*, 2022 SCC 12 at paras. 45-46; see also Nolet at para. 21.

[72] In the present case, the searches at issue are those of Mr. Khouchaba's person, his belongings and his vehicle, all of which were conducted incident to his arrest for possession of a weapon for a dangerous purpose. The officers both testified that their authority for the searches was the common law search power incident to arrest. To be a valid search incident to arrest, the person searched must be lawfully arrested, the search must be "truly incidental" to the arrest (in the sense of being for a valid law enforcement purpose related to the reasons for the arrest), and the search must be conducted reasonably: *Tim* at para. 49.

[73] During the hearing, the Crown conceded that the search of the trunk of Mr. Khouchaba's vehicle was in breach of s. 8. There was no evidence that Mr. Khouchaba had provided valid and informed consent to a search of the trunk. Further, while Cst. Kenny testified that he searched the passenger side of the car and the purse on the passenger seat to look for weapons, both officers testified that the reason for the search of the trunk was to determine if it contained camping gear, not to search for weapons. The Crown concedes a search on that basis is not "truly incidental" to Mr. Khouchaba's arrest for possession of a weapon for a dangerous purpose. I accept the Crown's concession and find there was a s. 8 breach in relation to the search of the trunk.

[74] Mr. Khouchaba's remaining challenges to the other searches - of his person, his belongings and the interior of the vehicle - is predicate on the lawfulness of the arrest. In other words, if the arrest was unlawful, any searches conducted incident to that arrest are not authorized by law. As I have concluded Mr. Khouchaba's arrest was lawful, his remaining s. 8 claims fail.

Charter s. 10(a) and (b): Was Mr. Khouchaba promptly informed of the reasons for his detention and arrest, and of his right to counsel

[75] Section 10(a) of the Charter requires the police to advise a person, immediately upon detention or arrest, of the reasons for the detention or arrest. Section 10(b) guarantees the right to retain and instruct counsel without delay and to be informed of that right. It imposes informational and implementational duties on the police, both of which must be provided without delay. Without delay means "immediately": *R. v. Suberu*, 2009 SCC 33 at paras. 40-41. The informational duty requires the police to inform the detainee of the right to retain and

instruct counsel. The implementational duty requires the police to provide the detainee with a reasonable opportunity to retain and instruct counsel and to refrain from eliciting evidence from the detainee until he or she has had that reasonable opportunity: *R. v. Bartle*, [1994] 3 S.C.R. 173 at 192.

- [76] The defence alleges s. 10 breaches at the same three points in time as the alleged s. 9 breaches.
- [77] First, the defence says Mr. Khouchaba's ss. 10(a) and (b) rights were breached on his initial detention because the traffic stop was a ruse, and Mr. Khouchaba was not advised of either the true reason for his detention or his rights to counsel. The defence concedes that if there was a valid MVA traffic stop, then the enforcement of traffic laws constitutes a reasonable limit on s. 10 rights under s. 1 of the Charter. In practical effect, a valid traffic stop suspends s. 10 rights: *Woody* at paras. 37, 64. As I have not accepted the "ruse" argument, I do not find any breach of Mr. Khouchaba's s. 10 rights arising from the initial traffic stop.
- [78] If the MVA stop was valid, the defence says Mr. Khouchaba's ss. 10(a) and (b) rights were breached when the focus of the officers' investigation shifted from an MVA infraction to possible criminal activity. As noted above, the Crown concedes there was a point at which the officers' questioning of Mr. Khouchaba went beyond general MVA compliance. In *Woody*, the Court considered the officer's candid admission that he had asked certain questions with the express purpose of inquiring into suspicions about criminal activity, and found that, as a result, the accused's s. 10(a) and (b) rights were engaged and had been infringed (*Woody* at paras. 62-67).
- [79] In the present case, both officers admitted on cross-examination that the questions Mr. Khouchaba was asked about camping and the machete were not in any way based upon or related to the MVA infraction. In fact, as noted, Cpl. Gudjonson offered his perspective that by that point, he was engaged in a "new" investigation. In my view, this evidence is akin to that in *Woody*. The Crown conceded in submissions that when the investigation shifted beyond the initial MVA infraction, Mr. Khouchaba's ss. 10(a) and (b) rights were engaged. As there is no suggestion Mr. Khouchaba was advised of the shift in the reason for his detention or of his rights to counsel, I find there was a breach of ss. 10(a) and (b) at that point.
- [80] The defence's final argument is that there was a breach of Mr. Khouchaba's s. 10(b) rights at the point of his initial arrest for possession of a weapon for a dangerous purpose. The defence does not allege independent breaches of the implementation component of s. 10(b) arising from Mr. Khouchaba's subsequent arrest for three offences following the search of the vehicle.
- [81] The Crown concedes this final breach of s. 10(b). Cpl. Gudjonson was candid about what he did and did not do when he initially arrested Mr. Khouchaba for possession of a weapon for a dangerous purpose. He testified he advised Mr. Khouchaba of the reason for his arrest and provided the standard caution that anything Mr. Khouchaba said could be used as evidence against him, but admitted he did not advise Mr. Khouchaba of his rights to counsel "at that

time". Having not fulfilled the informational component, Cpl. Gudjonson also did not take any steps to fulfill the implementational component of those rights. In fact, the evidence is clear that no steps were taken to facilitate access to counsel until after Mr. Khouchaba had been transported back to the RCMP detachment and booked-in, approximately an hour later. In my view, the Crown has not provided any valid explanation for this delay that could justify an infringement of Charter rights. That Mr. Khouchaba elected not to contact counsel until after he was released from the detachment does not change the analysis.

- [82] It is not disputed that Cpl. Gudjonson advised Mr. Khouchaba of his rights to counsel when he subsequently arrested Mr. Khouchaba for three offences after completing the search of the vehicle. But that does not cure the earlier issue. When pressed in cross-examination about why he did not advise Mr. Khouchaba of his rights to counsel after the earlier arrest, Cpl. Gudjonson's response was "I don't know." I accept the Crown's concession and find Mr. Khouchaba's s. 10(b) rights were breached at the point of his initial arrest.

Conclusion

- [83] I have found one breach of s. 10(a) of the Charter and two breaches of s. 10(b) of the Charter. I have also found one breach of s. 8 of the Charter, in relation to the search of the trunk of Mr. Khouchaba's vehicle. I have not found any breaches of s. 9 and, having determined that Mr. Khouchaba's arrest for possession of a weapon for a dangerous purpose was lawful, I have rejected Mr. Khouchaba's other alleged breaches of s. 8.
- [84] This ruling completes this component of voir dire #1. Given these findings, the next step in this criminal trial will be arguments under s. 24(2), which will be heard on Monday, June 23, 2025 in Nanaimo.

"K. Wolfe, J."

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