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R. v. Knight

2025 BCSC 15

COURT

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2025 BCSC 15 R. v. Knight

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Knight,

2025 BCSC 15

Date: 20250103

Docket: 93961

Registry: Kelowna

Rex

v.

Clayton Gregory Knight

Before: The Honourable Madam Justice Sukstorf

Reasons for Judgment re: Voir Dire #2

Counsel for the Crown:

G. Hutchings

Counsel for the Accused:

J.V. Myers

Place and Dates of Hearing:

Kelowna, B.C.

December 9, 10 and 13, 2024

Place and Date of Ruling given to parties with Reasons to Follow:

Port Coquitlam, B.C.

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January 3, 2025

Table of Contents

Introduction.. 3

Facts. 3

Positions of the Parties. 5

Legal Framework.. 5

Analysis. 6

Was the traffic stop and the subsequent checking of Mr. Knight's identification lawful, and if not, did it constitute a breach of ss. 7 and 10(a) of the Charter? In either case, at what point did the police interaction crystallize into detention, thereby triggering the obligations under ss. 10(a) and 10(b) of the Charter?. 7

Relevant Facts. 7

Law.. 7

Analysis. 8

Was the stop lawful?. 8

At what point was Mr. Knight detained?. 11

Conclusion on issue. 12

Did the Police Fail to Immediately Inform Mr. Knight of the Reasons for His Detention (S. 10(a))?. 13

Law.. 13

Application of the law to the facts. 14

Conclusion on whether the police failed to provide Mr. Knight with the reasons for his arrest 15

Did the police fail to inform Mr. Knight of the full extent of his jeopardy and corresponding right to counsel under s. 10(b)?. 16

Law.. 16

Application of the Law to the Facts. 16

Conclusion on whether the police failed to inform Mr. Knight of the full extent of his jeopardy. 18

Did the police fail to promptly facilitate Mr. Knight's access to counsel, breaching the implementation component of s. 10(b)??. 18

Law.. 18

Analysis. 20

Conclusion on issue. 22

Conclusion.. 23

Introduction

[1] This matter arises from the arrest and detention of Mr. Knight on February 9, 2021, for suspected drug-related offences. Mr. Knight alleges breaches of his Charter rights under ss. 7, 10(a), and 10(b).

[2] The onus rests on Mr. Knight to establish, on a balance of probabilities, that the police conduct breached his Charter rights. Should he succeed, the Court must then consider whether a remedy under s. 24(2) of the Charter is warranted.

[3] The issues before the Court are as follows:

a) Was the traffic stop and the subsequent checking of Mr. Knight's identification lawful, and if not, did it constitute a breach of ss. 7 and 10(a) of the Charter?

In either case, did the police interaction crystallize into detention, and if so, when did it trigger obligations under the Charter?

b) Did the police fail to immediately inform Mr. Knight of the reasons for his detention, breaching s. 10(a) of the Charter?

c) Did the police fail to inform Mr. Knight of the full extent of his jeopardy and the corresponding right to counsel under s. 10(b) of the Charter?

d) Did the police fail to promptly facilitate Mr. Knight's access to counsel, breaching the implementation component of s. 10(b)?

Facts

[4] The facts relevant to the Charter Motion are not in dispute. The fundamental dispute lies in the application of the law to the facts.

- [5] On February 9, 2021, Mr. Knight was staying at the Accent Inn in Kelowna, British Columbia, B.C. Between 3:00 a.m. and 3:30 a.m., the night auditor provided Mr. Knight with a new room key after verifying his identification. Later that morning, a bag of suspected illicit drugs was discovered outside the hotel lobby and given to Ms. Bhatta, the Assistant Manager. After reviewing surveillance footage, Ms. Bhatta identified the individual dropping the bag after exiting an SUV and called the police.
- [6] At 9:01 a.m., Constable Riley of the Kelowna RCMP was dispatched to the Accent Inn. Upon arrival, Ms. Bhatta handed him the baggie of drugs, showed him the CCTV footage and provided him with a USB drive containing the video. She also gave him Mr. Knight's name, room number, and checkout time.
- [7] Shortly thereafter, Cst. Riley positioned his vehicle to observe Room 317, where Mr. Knight was registered. Cst. Riley observed an individual matching the description from the video footage leave the vicinity of that room, carrying a similar backpack. Cst. Riley later recognized that individual in the passenger seat of a BMW SUV. Believing the vehicle was connected to his investigation, he followed it.
- [8] At approximately 9:40 a.m., Cst. Riley initiated a traffic stop. After confirming Mr. Knight's identity, Cst. Riley returned to his vehicle to run the occupants' names through the police database and request backup. He told the court; he had generalized safety concerns due to the presence of the two men and a large dog.
- [9] At 09:58 a.m., the backup police officer, Cst. Coan arrived.
- [10] At approximately 10:00 a.m., after Cst. Coan's arrival, Cst. Riley arrested Mr. Knight for possession of a controlled substance under s. 4(1) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA] and advised him of his rights, including access to counsel. Mr. Knight declined to exercise his right to counsel and was placed in the backseat of the police cruiser.
- [11] Around the same time, Cst. Coan also detained Mr. Colpitts for a drug investigation.
- [12] A search of the BMW continued, and it revealed additional evidence, including drugs, paraphernalia, and large sums of cash, which shifted the focus of the investigation toward a trafficking offence.
- [13] At approximately 10:16 a.m., Cst. Riley re-arrested Mr. Knight for possession for the purpose of trafficking under s. 5(2) of the CDSA. He then conducted a second reading of Mr. Knight's Charter rights, at which point Mr. Knight said he wanted to speak to a lawyer.
- [14] At approximately 10:57 a.m., Mr. Knight was transported to the police detachment, a drive only a few minutes away. Upon arrival, booking procedures commenced.
- [15] At approximately 11:12 a.m., Mr. Knight was provided access to counsel in a private phone room. He contacted a lawyer and spoke with him, concluding the call at 11:16 AM.

Positions of the Parties

- [16] Mr. Knight alleges that the vehicle stop and his subsequent arrest resulted in the four alleged breaches of his Charter rights. He argues that these breaches were exacerbated by vague safety concerns and investigative convenience, which, he contends, were insufficient to justify the delays of the police in fulfilling their constitutional obligations.
- [17] As a result, the defence contends that the evidence obtained during the detention and search should be excluded.
- [18] The Crown acknowledges some delay but asserts it was reasonable in the circumstances. He submits that the police acted in good faith, addressing officer safety and logistical concerns during a dynamic and fluid investigation.

Legal Framework

- [19] Section 10(a) of the Charter protects the right of individuals, upon arrest or detention, to be informed promptly of the reasons for their arrest or detention. This right is foundational, as it ensures that individuals understand the basis of their restraint. As the Supreme Court of Canada noted in *R. v. Evans*, [1991] 1 S.C.R. 869, [Evans], s. 10(a) is "founded most fundamentally on the notion that one is not obliged to submit to an arrest if one does not know the reasons for it" (Evans, at pp. 886-887).
- [20] Section 10(b) of the Charter guarantees the right of individuals, upon arrest or detention, to retain and instruct counsel without delay and to be informed of that right.
- [21] Sections 10(a) and 10(b) are interconnected. As the B.C. Court of Appeal emphasized in *R. v. Heppner*, 2019 BCCA 108 [Heppner] an individual must be informed of the reasons for their arrest or detention so they can make an informed choice about whether to exercise their right to counsel. Moreover, if the right to counsel is exercised, understanding the extent of their jeopardy enables the detainee to obtain legal advice that is tailored to their specific legal situation (Heppner, at para. 63).
- [22] The leading authorities from the SCC decisions in *R. v. Suberu*, 2009 SCC 33 [Suberu], *R. v. Grant*, 2015 SCC 9 [Grant], and *R. v. Taylor*, 2014 SCC 50 [Taylor], provide a framework for analyzing detention and s. 10 Charter breaches.
- [23] Speaking generally, in *Suberu*, the SCC emphasized that not every interaction between an individual and the police constitutes detention for the purposes of the Charter, even if the individual is under investigation for criminal activity, asked questions, or momentarily delayed by police contact. Section 9 of the Charter does not require police to refrain from engaging with members of the public unless they have specific grounds linking the individual to a crime. Similarly, not every police encounter with a suspect will trigger the right to counsel under s. 10(b).

Analysis

[24] The Court carefully analyzed the evidence and submissions in relation to the four Charter breaches alleged by Mr. Knight. For clarity and coherence, I analyzed the issues in the order that reflects the logical progression of events, beginning with the determination of when Mr. Knight's detention began.

Was the traffic stop and the subsequent checking of Mr. Knight's identification lawful, and if not, did it constitute a breach of ss. 7 and 10(a) of the Charter? In either case, at what point did the police interaction crystallize into detention, thereby triggering the obligations under ss. 10(a) and 10(b) of the Charter?

Relevant Facts

[25] It is undisputed that Cst. Riley stopped the vehicle based on the evidence linking Mr. Knight to the bag of illicit drugs found at the Accent Inn. However, the Crown and defence differ on the precise point at which detention crystallized.

Law

[26] Asking for identification during a traffic stop does not always amount to a "detention" for Charter purposes. However, once a person is detained, s. 10(a) requires that they be promptly informed of the reason for their detention.

[27] In determining when Mr. Knight's detention crystallized, the Court must apply the test for psychological detention articulated in Grant.

[28] Under the purposive approach outlined in Grant, psychological detention occurs either when an individual has a legal obligation to comply with a restrictive request or demand, or when a reasonable person would conclude, based on police conduct, that compliance was not optional. The onus is on the applicant to demonstrate that their liberty of choice was significantly deprived in the circumstances.

[29] In Grant, the Court outlined that detention involves a significant physical or psychological restraint, determined by:

- a) The circumstances giving rise to the encounter;
- b) The nature of the police conduct; and
- c) The characteristics of the individual.

- [30] The test is objective, and while the applicant's failure to testify about their perception is not fatal, evidence must support the contention that the police's conduct significantly restricted their liberty. The distinction between general questioning and focused interrogation amounting to detention can be subtle and fact specific. It is the role of the trial judge on a Charter application to analyze the circumstances and determine whether the line between general questioning and detention has been crossed.
- [31] In short, courts must assess the totality of the specific circumstances surrounding the police interaction to determine if or when a Charter breach occurred.

Analysis

Was the stop lawful?

- [32] As discussed above, not every instance where police request identification will amount to a Charter breach.
- [33] The operation of an individual's Charter rights hinges on the purpose of the traffic stop, with the analysis varying based on whether the stop is aimed at enforcing traffic or vehicle safety laws or is conducted in connection with a criminal investigation.
- [34] In B.C., the judicial treatment of dual-purpose stops has been addressed by the Court of Appeal in *R. v. Kaddoura*, 2009 BCCA 113 [Kaddoura]. The decision establishes that when a police officer observes a violation of the Motor Vehicle Act, R.S.B.C. 1996, c. 318, the officer is entitled to stop the vehicle under statutory authority and to request the driver produce their licence and vehicle registration documents. Such a stop is not considered arbitrary nor unlawful under the Charter.
- [35] In *R. v. Abdullahi*, 2020 BCSC 1822 [Abdullahi], the court confirmed that requesting identification during a vehicle stop must be grounded in lawful authority. Police cannot misuse their authority to conduct a stop as a pretext for pursuing broader criminal investigations without sufficient lawful grounds.
- [36] Justice Shergill's comments in *Abdullahi* provide a useful framework on how Charter rights are engaged during different types of motor vehicle stops:
- [35] Sections 10(a) and (b) of the Charter require the police to advise a person upon arrest or detention, the reason for the detention and their right to retain and instruct counsel without delay. These rights are engaged immediately when a driver is stopped by the police, though the manner in which they operate depends on the nature of the stop, i.e., whether it is for enforcement of traffic or vehicle safety laws, or a criminal investigation: *Woody*, at para. 36.

- [36] When the vehicle stop is based on the enforcement of traffic or vehicle safety laws, the section 10 Charter rights of the detainee are overridden by operation of s. 1 of the Charter. This is because traffic and vehicle safety is considered to be a pressing and substantial objective, which constitutes a reasonable limit on one's s. 10 rights: *Woody* at para. 37; see also *R. v. Strilec*, 2010 BCCA 198 at para. 35, 40.
- [37] The s. 10 Charter right is fully engaged when the stop is based on suspected criminal activity. In that case, the detainee has the right to be informed of the reason for the detention and his or her right to retain and instruct counsel without delay: *Woody* at para. 38.
- [37] The legality of a motor vehicle stop is determined by its primary purpose. Stops for traffic enforcement or road safety are not considered arbitrary, if any secondary purpose is lawful. However, dual-purpose stops differ from those conducted exclusively to facilitate an arrest or further a criminal investigation, which require distinct legal justification.
- [38] Traffic and safety stops, though inherently arbitrary detentions, are justified under s. 1 of the Charter due to their pressing and substantial objectives, such as traffic enforcement and vehicle safety. *R. v. Nolet*, 2010 SCC 24, para. 22.
- [39] However, the detention will only be justified if the police act within the limited highway-related purposes for which the powers were conferred. *R. v. Hufsky*, [1988] 1 S.C.R. 621 at p. 637.
- [40] When police conduct a stop to effect an arrest or pursue a criminal investigation, they cannot rely on the justification for random vehicle stops permitted under s. 1 of the Charter. Such traffic stops go beyond the limited purposes for which random stops are authorized and require specific legal grounds.
- [41] This nuance in assessing the legality of a traffic stop is succinctly captured by Groberman J.A. in *Kaddoura* at para. 21:

When a random check stop is used to conduct criminal investigations as well as motor vehicle checks, the section 1 analysis is altered because the stop becomes a more invasive one, and the pressing and substantial objective is diluted.

- [42] The case of *R. v. Woody*, 2018 BCSC 2275 [*Woody*] provides a clear articulation of practical considerations that arise when a detention is based on suspected criminal activity rather than enforcement of traffic or vehicle safety law.
- [43] In *Woody*, Cst. Coyne stopped Mr. Woody's vehicle ostensibly for traffic-related reasons, a Motor Vehicle Act infraction involving missing taillights and possible speeding. However, Justice Riley found that the constable's conduct went beyond the stated purpose of the stop. Specifically, he found:

- a) Cst. Coyne admitted that his true intention in questioning Mr. Woody about his movements was to pursue his suspicions regarding drug trafficking ("getting a story started");
 - b) The Court held that while the stop was initially valid for Motor Vehicle Act purposes, the questioning that followed was directed toward an unfounded drug investigation and strayed from the permissible limits of the original basis for the detention; and
 - c) Justice Riley emphasized that the officer's conduct must remain rationally connected to the lawful basis for the stop; when it diverges into pursuing unrelated suspicions without advising the detainee of their true jeopardy, this results in a breach of s. 10(a) and 10(b) of the Charter.
- [44] In this case, it is also undisputed that Cst. Riley requested Mr. Knight's identification while fully aware that Mr. Knight was a suspect in an ongoing criminal investigation, having followed the BMW directly from the hotel. Cst. Riley already had a bag of illicit drugs that were allegedly dropped by Mr. Knight, as well as Mr. Knight's name and a physical description. The request for identification was therefore not incidental to a routine traffic stop but was investigative in nature. These facts differentiate this case from much of the case law.
- [45] Police cannot randomly stop vehicles to enforce criminal laws unrelated to driving. Such stops are arbitrary unless the police have reasonable grounds to suspect an individual's connection to a recent or ongoing criminal offence, and the detention is necessary to further the investigation (R. v. Mann, 2004 SCC 52). A clear nexus must exist between the detention and the investigation.
- [46] In Mann, the SCC clarified that reasonable grounds requires both subjective suspicion and objective justification based on specific, articulable facts. The Court rejected reliance on mere intuition or vague concerns. Investigative detention must be brief and cannot compel responses.
- [47] Further, if the original intent was to arrest Mr. Knight, Cst. Riley required reasonable and probable grounds to believe that an offence had been or was about to be committed.
- [48] In this case, based on the evidence and Cst. Riley's testimony, I find that Cst. Riley did have at a minimum, reasonable grounds to suspect that Mr. Knight was connected to a drug offence that had occurred. Consequently, I find that his original stop of the BMW and his request for Mr. Knight's identification was lawful from that perspective.

At what point was Mr. Knight detained?

- [49] It is undisputed that Mr. Knight was detained; the issue in dispute is the precise moment the detention began. Identifying this moment is critical, as it establishes the timeline for Mr. Knight's Charter rights under ss. 10(a) and 10(b). If detention began at the outset or shortly after Cst. Riley's interaction with Mr. Knight, Cst. Riley was required to promptly inform him of the reasons for his detention.

- [50] Determining the point of detention requires considering the totality of the circumstances, including Cst. Riley's conduct and the context of the interaction, to evaluate whether a reasonable person in Mr. Knight's position would feel free to leave. Applying the Grant test, I find detention crystallized as soon as Cst. Riley confirmed Mr. Knight's identity.
- [51] Cst. Riley deliberately followed the vehicle carrying Mr. Knight, having already identified him as a suspect. His request for Mr. Knight's identification was not related to traffic concerns but intended to confirm his identity in connection with a suspected drug offence.
- [52] Cst. Riley did not inform Mr. Knight of the true reason for the stop, that he was under investigation for possession of illegal drugs. After confirming his identity, Cst. Riley left Mr. Knight waiting in the vehicle while requesting backup, creating a reasonable perception of psychological compulsion.
- [53] A reasonable person in Mr. Knight's position, knowing they had been followed and stopped, would recognize they were the focus of a targeted investigation rather than a routine traffic stop.
- [54] Collectively, Cst. Riley's actions: following the vehicle, conducting the stop, requesting identification, and running Mr. Knight's name in police databases, created circumstances where a reasonable person would feel they were not free to leave, thereby establishing psychological detention.
- [55] The case of *R. v. James*, 2017 BCSC 2593 clarifies this point where it found that the suspect's psychological detention crystallized when the police ran the suspect's name through a database. The Court held that requesting identification during a focused criminal investigation signals detention for Charter purposes.
- [56] Unlike *James*, where a false name caused delays, Mr. Knight confirmed his identity immediately, making the detention more instant.

Conclusion on issue

- [57] In summary, I find that the traffic stop and request for Mr. Knight's identification were lawful, as Cst. Riley had reasonable cause to suspect Mr. Knight's involvement in a drug-related offence. The stop was neither arbitrary nor pretextual, and the request for identification was reasonably connected to confirming Mr. Knight's identity as part of the investigation.
- [58] Further, I find that the detention crystallized as soon as Cst. Riley confirmed Mr. Knight's identity, having already formed a strong suspicion of drug-related activity.

Did the Police Fail to Immediately Inform Mr. Knight of the Reasons for His Detention (s. 10(a))?

Law

- [59] The SCC explained the tests under s. 10(a) in *Evans* at 888:

When considering whether there has been a breach of s. 10(a) of the Charter, it is the substance of what the accused can reasonably be supposed to have understood, rather than the formalism of the precise words used, which must govern. The question is whether what the accused was told, viewed reasonably in all the circumstances of the case, was sufficient to permit him to make a reasonable decision to decline to submit to arrest, or alternatively, to undermine his right to counsel under s. 10(b).

- [60] Section 10(a) of the Charter requires that detainees be informed of the reasons for their detention "promptly." As established in *Mann*, this obligation arises immediately upon detention, ensuring that individuals understand the basis for their restraint.
- [61] The duty to promptly inform a detainee "in clear and simple language" of the reasons for detention is integral to safeguarding their rights and ensuring they comprehend their jeopardy (*R. v. Gonzales*, 2017 ONCA 543). Even brief delays in fulfilling this obligation may constitute a breach of s. 10(a) of the Charter if they are not adequately justified (*R. v. Dugas*, 2022 BCSC 1947 [Dugas]). Any delay in advising the individual of the reason for detention must be justified by exceptional circumstances, such as specific and articulable concerns for officer or public safety (*R. v. Mian*, 2014 SCC 54 [Mian]).
- [62] In *Dugas*, the Court highlighted both the temporal and substantive requirements of s. 10(a) of the Charter. There, officers arrested Mr. Dugas during a firearms investigation but delayed advising him of the reasons for arrest for approximately 10 minutes while addressing other investigative priorities. The Court held this delay breached s. 10(a) of the Charter, emphasizing that constitutional obligations must take precedence over investigative priorities. The duty to promptly inform a detainee of the reasons for detention arises immediately, except in cases where specific and justifiable safety concerns warrant a brief delay.

Application of the law to the facts

- [63] As previously discussed, this was not a dual-purpose stop. Consequently, the analysis is confined to investigative detention or arrest in a criminal context, where Charter protections for the individual under police suspicion are immediately engaged, regardless of whether the detention occurs in a vehicle, on a sidewalk, in a coffee shop, or elsewhere.
- [64] As the focus of police suspicion, Mr. Knight was required to be promptly informed of the reasons for his detention and of his right to retain and instruct counsel without delay.
- [65] In *Abdullahi*, police stopped and searched a vehicle of alleged suspects in a robbery investigation. Surveillance footage of where the robbery occurred identified a partial plate of a BMW X3, linked to the crime, and registered to the accused, Mr. Abdullahi. Observing the BMW X3 driving slowly in a strip mall parking lot, a Surrey RCMP constable followed the vehicle, ran its plate, and discovered a police bulletin linking it to the robbery. The bulletin instructed officers to document the occupants and their clothing.

- [66] Acting on this information, the constable stopped the vehicle, driven by Mr. Abdullahi with Mr. Ali Ismail as a passenger. The constable claimed to smell fresh marijuana, arrested both occupants for possession, and conducted a search. Neither drugs nor weapons were found.
- [67] The Court found multiple Charter breaches:
- a) Section 9: The detention was arbitrary, as the claim of smelling marijuana was a pretext to further the robbery investigation;
 - b) Section 10(a): The occupants were not informed of the true reason for their detention; and
 - c) Section 10(b): Police failed to facilitate timely access to counsel.
- [68] Applying these principles, the Court declared the stop, detention, and search unlawful.
- [69] Under s. 10(a) of the Charter, Cst. Riley was required to promptly inform Mr. Knight of the reason for his detention. Delaying this advisement for 20 minutes compromised Mr. Knight's ability to understand his legal jeopardy and exercise his rights under s. 10(b).

Conclusion on whether the police failed to provide Mr. Knight with the reasons for his arrest

- [70] As discussed above, Mr. Knight's detention crystallized when Cst. Riley confirmed his identity. At that moment, s. 10(a) of the Charter required Cst. Riley to inform Mr. Knight of the true reason for his detention. Instead, Mr. Knight was left sitting in the vehicle for 20 minutes without being told he was the focus of a drug investigation.
- [71] I find that the Crown's reliance on officer safety concerns to justify the delay is unsupported by evidence of any specific threat. As held in *Mann and Suberu*, generalized safety concerns do not excuse delays in meeting constitutional obligations.
- [72] I find that the failure of Cst. Riley to promptly inform Mr. Knight of the reason for his detention violated Mr. Knight's s. 10(a) Charter rights.

Did the police fail to inform Mr. Knight of the full extent of his jeopardy and corresponding right to counsel under s. 10(b)?

Law

- [73] Failure to fully inform a detained individual of their jeopardy, particularly when police suspect more serious offences, denies them the ability to understand their situation and exercise their rights effectively.
- [74] In *Nolet*, the SCC established a framework for assessing police conduct during interactions with detained individuals as circumstances evolve. The case involved a vehicle stop that began as a lawful regulatory stop under provincial law but transitioned into a criminal investigation. The Court emphasized the importance of evaluating each stage of police conduct through a step-by-step analysis to ensure the police officers acted within their

lawful authority and to identify any Charter breaches that may have arisen during the progression of the interaction.

- [75] At para. 4 of Nolet, Justice Binnie acknowledged that "roadside stops sometimes develop in unpredictable ways," while highlighting the need for scrutiny to ensure that police conduct remains lawful throughout. Further, at para. 23, Justice Binnie emphasized again that a roadside stop is not a static event. Courts must therefore assess the lawfulness of police actions as the situation unfolds, analyzing each stage of the interaction to ensure compliance with legal and constitutional requirements.

Application of the Law to the Facts

- [76] At 10:00 a.m., Cst. Riley advised Mr. Knight of his arrest for possession but failed to disclose his suspicion of trafficking, which I find informed subsequent investigative actions, including the vehicle search. While Cst. Riley claimed he lacked grounds to arrest for trafficking, his actions, requesting backup, targeting the vehicle, and conducting the stop, demonstrated that his suspicion that Mr. Knight was involved in trafficking was his focus from the outset.
- [77] Mr. Knight's arrest for possession of a prohibited substance occurred shortly after police backup arrived, and Cst. Riley told the court of his initial observations that were consistent with drug trafficking, including the vehicle's messy interior, food containers, and multiple bags. Following the search and discovery of additional items, Cst. Riley re-arrested Mr. Knight for trafficking, informing him of the more serious charge which prompted Mr. Knight's request to consult with legal counsel.
- [78] Applying the step-by-step framework from Nolet, at the first stage, after a 20-minute wait for backup, Cst. Riley arrested Mr. Knight for possession but omitted to advise Mr. Knight of his suspicion that Mr. Knight was involved in trafficking. This omission, despite Cst. Riley's clear focus on trafficking, breached Mr. Knight's s. 10(a) Charter rights, which requires detainees to be promptly informed of the reasons for their detention. Cst. Riley's failure deprived Mr. Knight of the opportunity to understand his jeopardy fully.
- [79] At the second stage, I find that the scope of the vehicle search was directly informed by Cst. Riley's suspicion of trafficking. By failing to disclose this suspicion, I find that Cst. Riley exceeded the boundaries of the arrest for possession, effectively placing Mr. Knight under investigative detention for trafficking without informing him of the true nature of his jeopardy. As highlighted in Woody and Nolet, when police actions expand beyond the initial purpose of detention, detainees must be fully informed of their complete or evolving jeopardy to comply with s. 10(a) of the Charter. The incomplete advisement also compromised Mr. Knight's ability to safeguard his rights under s. 10(b) which will be discussed later.

[80] As the SCC emphasized in *Nolet*, police cannot rely on initial justifications for detention to legitimize subsequent actions that exceed their lawful authority. By failing to disclose his suspicion of trafficking, conducting the vehicle search, and delaying the full advisement, Cst. Riley violated Mr. Knight's s. 10(a) Charter rights. These breaches also undermined Mr. Knight's s. 10(b) rights by denying him the transparency necessary for timely legal advice, which compromised the fairness of the process. Notably, Mr. Knight's decision to exercise his right to legal counsel changed after he was fully informed of his jeopardy.

Conclusion on whether the police failed to inform Mr. Knight of the full extent of his jeopardy

[81] I find that Cst. Riley's failure to disclose his suspicion of trafficking at the outset deprived Mr. Knight of the opportunity to fully understand his jeopardy. This omission undermined Mr. Knight's ability to make informed decisions about exercising his right to counsel.

Did the police fail to promptly facilitate Mr. Knight's access to counsel, breaching the implementation component of s. 10(b)??

Law

[82] As outlined in *R. v. Sinclair*, 2010 SCC 35 at para. 27, s. 10(b) of the Charter contains two distinct components:

- a) Informational Component: The police must advise the detainee of their right to counsel promptly upon arrest or detention; and
- b) Implementational Component: The police must provide the detainee with a reasonable opportunity to exercise their right to consult with counsel. This includes a duty to delay questioning the detainee until they have been given such an opportunity.

[83] Failing to comply with either component frustrates the purpose of s. 10(b) of the Charter, which is to ensure that detainees can obtain legal advice relevant to their legal situation. (*Sinclair*, at para. 27; see also *Suberu*, at paras. 37-38).

[84] Section 10(b) requires police to inform detainees of their right to counsel "immediately" upon detention. The purpose is to mitigate the legal disadvantage of the detainee and allow them to make informed decisions about their rights (*Suberu*, *Mian*).

[85] Once Mr. Knight asserted his s. 10(b) Charter right, the onus shifted to the Crown to demonstrate that any delay in facilitating access to counsel was reasonable in the circumstances. As the SCC emphasized in *Taylor* at para. 24, delays must be justified based on specific and articulable circumstances rather than assumptions or general practices.

[86] In *R. v. Patrick*, 2017 BCCA 57 [Patrick], Justice Fitch emphasized that the obligation to facilitate access to counsel immediately upon detention may be subject to reasonable delays in cases involving officer or public safety concerns. Practical barriers, such as remote locations, safety concerns, or logistical challenges, may justify short delays. However, courts

must assess whether these barriers were genuinely unavoidable. As Justice Fitch noted at para. 113, the "practicalities of the situation" must inform whether the delay was reasonable in the totality of the circumstances.

- [87] While access must be provided "immediately," this does not mean "instantaneous." As explained in *R. v. Fan*, 2017 BCCA 99, practical considerations may influence what is reasonable. (Patrick at para. 112, citing Taylor at para. 31).
- [88] In Taylor, the SCC reaffirmed that delays in facilitating access to counsel must be justified by demonstrable obstacles, not mere assumptions of impracticality. Similarly, in *R. v. Manninen*, [1987] 1 S.C.R. 1233, the SCC made it clear that investigative priorities, such as searching a vehicle or gathering evidence, cannot supersede a detainee's right to access counsel once invoked.
- [89] The case of *R. v. Rover*, 2018 ONCA 745, underscores that routine police practices or generalized concerns cannot justify delays. Police must take proactive and reasonable steps to minimize any delay while safeguarding both their investigative needs and the detainee's Charter rights.
- [90] Ultimately, the Crown bears the burden of demonstrating that any delay in facilitating access to counsel was reasonable. Courts must scrutinize the reasons provided to determine whether they are justified based on evidence. As stated in Patrick (at para. 116), the inquiry must consider whether the delay was reasonable in the totality of the circumstances.

Analysis

- [91] The Crown submitted that the delay in advising Mr. Knight of his rights to counsel was justified by safety concerns and the need for backup. The Crown relies upon the BCCA decision of *Fan*, where the Court upheld a three-hour delay in access to counsel due to logistical barriers, including the remoteness of the property and language considerations. The delay was deemed reasonable because it was proven by the Crown to be unavoidable under the circumstances.
- [92] In *Fan*, the police received a tip regarding a marijuana grow operation on a remote property near Horsefly, B.C. The property was extremely isolated, lacking cell phone coverage, power, or immediate access to communication services. Acting on this tip, police obtained a search warrant and executed it, discovering a significant marijuana grow operation on the premises.
- [93] The accused, Mr. Fan and Mr. Guan, were located at the property during the search. They were arrested, handcuffed, and advised of the reasons for their arrest in English. Anticipating language barriers, the police brought Chinese script Charter cards to ensure compliance with s. 10(b) of the Charter. Both Mr. Fan and Mr. Guan were advised of their right to counsel using these cards.

- [94] Following their arrest, the accused were transported to the police detachment, arriving at approximately 2:44 p.m. Despite being informed of their rights at the scene, access to counsel was delayed due to geographical limitations and the absence of communication facilities on the property. At approximately 3:53 p.m., roughly three hours after their arrest, Mr. Fan was able to call duty counsel with the assistance of an interpreter. Mr. Guan's call followed shortly thereafter.
- [95] The police justified the delay in facilitating access to counsel by pointing to the logistical challenges posed by the property's remote location, the lack of telephone service, and the need for interpreters. The Court found that the police had promptly advised Mr. Fan and Mr. Guan of the reasons for their arrest, in compliance with s. 10(a). However, the delay in implementing the accused's right to counsel was deemed reasonable in the circumstances, as the police were faced with legitimate practical barriers that made immediate access to legal advice impossible.
- [96] However, unlike in *Fan*, where the issue was limited to a delay in implementing access to legal counsel, the breach of s. 10(b) in the case before me is twofold.
- [97] First, at the informational stage, the police failed to advise Mr. Knight of the full extent of his jeopardy. While Mr. Knight was initially informed of his arrest for possession, the concurrent suspicion of trafficking was not disclosed. This omission undermined Mr. Knight's ability to make an informed decision about exercising his right to counsel, as he was unaware of the full seriousness of the allegations against him.
- [98] Second, at the implementation stage, the police failed to facilitate access to counsel without delay following Mr. Knight's clear request after his re-arrest for trafficking.
- [99] While logistical factors, such as transportation to the detachment, may explain part of the delay, there is no evidence that the police took any proactive steps to expedite Mr. Knight's ability to exercise his right to counsel.
- [100] In *Taylor* at para. 33, the SCC emphasized that police have a constitutional obligation to take proactive measures to facilitate access to counsel promptly, even when faced with logistical or challenging circumstances. Assumptions, inaction, or competing investigative priorities cannot excuse a failure to comply.
- [101] In distinguishing the facts of *Fan* from the present case, I find no comparable barriers, significant logistical challenges, or safety concerns that would have prevented Cst. Riley from promptly facilitating Mr. Knight's right to counsel immediately upon detention.
- [102] Regarding safety concerns, neither Mr. Knight nor Mr. Colpitts exhibited any signs of resistance, nor was there evidence presented during this voir dire suggesting they had a history of being violent or difficult with police. Although Cst. Riley noted the presence of a 150-pound dog in the back of the vehicle, there was no evidence to indicate that the dog behaved aggressively at any stage. In fact, the dog was safely placed in the cruiser with Mr. Colpitts after their arrests. Despite being only minutes away from the police station, the

officers prioritized searching the vehicle over promptly facilitating access to legal counsel.

- [103] The SCC has been unequivocal in cases such as *Manninen*, that police cannot prioritize investigative steps, such as conducting a vehicle search, over the detainee's right to timely legal advice.
- [104] In *Mian*, the court held that even a 22-minute delay in providing access to counsel was unjustified in the absence of specific and demonstrable obstacles. The delay in Mr. Knight's case, 56 minutes, is far more egregious and entirely unexplained by any evidence of exceptional circumstances, such as officer or public safety concerns. Further, I note that the total delay from when Cst. Riley confirmed Mr. Knight's identity until the time he spoke with counsel was approximately 92 minutes.
- [105] The difficulty with Cst. Riley's evidence in this case is that, despite being only minutes away from the police station, he did not even appear to have considered how Mr. Knight might be afforded an opportunity to seek legal counsel during the detention. To his credit, Cst. Riley acknowledged in his testimony that if the incident occurred today, facilitating access to counsel roadside would have been a feasible option. This admission highlights that the delay was not dictated by insurmountable practical barriers but rather by a failure to adequately prioritize the constitutional requirements at the time.

Conclusion on issue

- [106] I find that the 56-minute delay in facilitating access to counsel was unjustified, as no logistical or safety concerns were evident. Despite being minutes away from the detachment, police prioritized searching the vehicle over promptly addressing Mr. Knight's constitutional right to counsel.

Conclusion

- [107] In summary, I find that while the traffic stop was lawful and police had reasonable grounds to suspect Mr. Knight's involvement in a drug-related offence, his subsequent detention and actions by Cst. Riley resulted in Charter breaches under ss. 10(a) and 10(b).
- [108] First, the failure to promptly inform Mr. Knight of the reasons for his detention and then their failure to advise him of the full extent of his jeopardy breached Mr. Knight's s. 10(a) Charter rights.
- [109] Second, following Mr. Knight's re-arrest for trafficking and his clear request to speak with legal counsel, I find there were no logistical or safety barriers that impeded the implementation of his right; instead, the police prioritized the vehicle search over addressing Mr. Knight's constitutional protections. Consequently, I find that the unjustified 56-minute delay in facilitating Mr. Knight's access to legal counsel violated his rights.

[110] I find that the cumulative breaches of ss. 10(a) and 10(b) undermined Mr. Knight's ability to make informed decisions about his legal rights. These failures deprived him of procedural fairness and contravened his constitutional protections under the Charter. The Court finds violations of Mr. Knight's Charter rights that need to be analyzed further under s. 24(2).

"Sukstorf J."

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