

CANADA / JUDGMENT

R. v. Maki

2022 BCSC 2512

COURT

Supreme Court of British Columbia

DECIDED

15 December 2022

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2022 BCSC 2512 R. v. Maki

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Maki,

2022 BCSC 2512

Date: 20221215

Docket: 35801-2, 35801-3

Registry: Williams Lake

Rex

v.

Stephen Tosh Maki

Before: The Honourable Madam Justice Church

Oral Ruling on Voir Dire #1

Counsel for the Crown:

M. Aziz

Counsel for the Defence:

J. Killoran

Place and Date of Trial/Hearing:

Williams Lake, B.C.

December 13 & 14, 2022

Place and Date of Judgment:

Williams Lake, B.C.

December 15, 2022

- [1] THE COURT: I indicated yesterday at the conclusion of the voir dire that I would give reasons for my ruling today. Because of that short time frame, my reasons are perhaps less fulsome than they might otherwise have been. If a transcript is ordered, I reserve the right to edit the reasons. The reasoning and the decision, will not change.
- [2] Stephen Maki is charged on Indictment 35801-2 with one count of possession of a controlled substance, fentanyl, for the purpose of trafficking, and one count of possession of a weapon dangerous to the public peace. These offences are alleged to have occurred on January 19, 2020, near Williams Lake, B.C.
- [3] Mr. Maki was arrested following a Motor Vehicle Act traffic stop on Highway 97 north of Williams Lake. Following his arrest and in the course of a search incidental to arrest, RCMP officers located a number of weapons, including an unsheathed hunting knife, bear spray, baseball bats and a machete, as well as a large quantity of Canadian currency, and a quantity of a substance later determined to be fentanyl.
- [4] By way of a notice of application filed on July 21, 2022, Mr. Maki alleges that his s. 8 and 9 Charter rights were violated on January 19, 2020. He seeks exclusion of all evidence gathered in violation of his s. 8 and 9 Charter rights.
- [5] At the commencement of the trial before me, I declared a voir dire to determine the accused's Charter application. The only witness on the voir dire was Constable Jason Linde, the RCMP constable who conducted the traffic stop and arrested the accused.
- [6] Constable Linde has been a member of the RCMP since 2006. On January 19, 2020, he was assigned to the B.C. Highways Traffic Section out of Williams Lake RCMP detachment and was patrolling north of Williams Lake on Highway 97. At that time he had been assigned to the traffic unit in Williams Lake for two years. He described his duties in that role as the enforcement of the Motor Vehicle Act and its regulations and any other Acts related to the highway. Constable Linde testified that in the course of carrying out those duties members would sometimes come across other offences, including drug offences, weapons, drug trafficking and, when that occurred, the officer in the traffic unit would take on those investigations as the primary investigator.
- [7] Constable Linde testified that on January 19, 2020, he was working as part of the traffic unit and patrolling Highway 97 near Blue Lake when he noted a high-end SUV. He described the weather as overcast and the road conditions as slippery, bare and wet with some buildup of snow on the centre and fog lines. He observed the southbound SUV pass him as he was travelling northbound and determined that he wished to stop the vehicle to check for winter tires. Constable Linde said that the area of the highway he was on was winding and it took

some time to find a safe place to turn around in order to follow the southbound SUV. Once he got his vehicle turned around Constable Linde testified that it became apparent that the SUV was travelling at excessive speeds. He said that it took him nine minutes to catch up and obtain a speed for the SUV on his radar device.

- [8] Once he closed the distance with the SUV, he obtained a radar reading for the vehicle at 142 kilometres per hour in an area where the posted speed limit was 90 kilometres per hour. As he attempted to close the distance between his police vehicle and the SUV, the vehicle entered an area of curves where there was no safe place to pull over. During this stretch of highway Constable Linde observed the SUV pass another vehicle on a double solid yellow line and continue on at speed. Constable Linde caught up to and passed the same slower vehicle and then attempted to close the gap with the SUV when it once again passed a slower vehicle on a double solid yellow line. Immediately after completing the second passing maneuver, the SUV abruptly pulled off the highway and into a brake check area north of Williams Lake.
- [9] Constable Linde followed the vehicle into the brake check, activated his emergency lights, and pulled up behind it. As he exited his police vehicle, Constable Linde observed the male driver exit the vehicle, lean over and vomit, stand up slightly, reach over and close the driver's door, and then continue vomiting. As Constable Linde approached, the male driver asked him how he was doing and they engaged in a brief conversation about his vomiting and what might have caused it. Constable Linde then asked to see the male driver's licence and/or vehicle registration. The driver's right arm was in a sling pressed against his body and in response to Constable Linde's request to see the driver's licence he patted his pants with his left hand and said that he did not have it. He then opened the driver's side door of the vehicle and reached in to retrieve his wallet. As the male reached inside the vehicle, Constable Linde placed his hand on the top of the driver's door and opened it slightly further than it had been opened by the driver. The male driver produced his wallet and said that he did not have his driver's licence. At Constable Linde's request he produced a CareCard and gave it to the officer.
- [10] While Constable Linde was standing at the door to the vehicle while the driver retrieved his wallet he looked down in the driver's side door pocket and observed a large unsheathed hunting knife and a can of bear spray wrapped in camo tape. After looking at the CareCard in the name of Stephen Maki, Constable Linde said he again asked for the registration papers for the vehicle and asked to whom the vehicle belonged. Mr. Maki replied "a buddy of a buddy" and pointed at the passenger. Constable Linde noted that the insurance papers that were produced showed the vehicle registered to a numbered company out of the Lower Mainland, and the passenger subsequently answered that it was a company vehicle.

- [11] Constable Linde said that, based on his experience as a traffic member and investigator with the RCMP, several indicators during the interaction with the accused gave him concern that this was more than just a traffic stop for excessive speed. He testified that he formed the belief that the weapons he observed in the driver's side door pocket were possessed for a dangerous purpose and once another member arrived he arrested Mr. Maki for possession of a weapon for a purpose dangerous to the public peace.
- [12] Constable Linde handcuffed Mr. Maki, searched him for weapons, and then placed him in the police vehicle. After making some notes, he formally Chartered and warned Mr. Maki, who indicated that he wished to speak to counsel. Constable Linde facilitated Mr. Maki's access to counsel at roadside. After speaking with counsel Mr. Maki and the passenger, who had also been arrested for the same offence, were transported to the Williams Lake detachment. Constable Linde said that he remained on scene to search the vehicle incidental to arrest. He testified that it is his practice to take pictures prior to any search and before moving anything and then to also take pictures as the search is conducted.
- [13] He identified a number of photographs entered as Exhibit 2 on the voir dire as the photographs he took prior to and during the search. Constable Linde testified that a number of items were located and seized, including the bear spray and hunting knife in the door pocket, personal amounts of drugs on the passenger side floor, other weapons including folding knives, two baseball bats and a machete located in the rear cargo area. Also located during the search incidental to arrest was a yellow plastic bag containing a large amount of Canadian currency estimated to be around \$60,000, a bag of granule powder-ish substance later confirmed to be fentanyl, and a large amount of pressed pills that were later confirmed to contain fentanyl. Constable Linde also located identity documents associated to the accused and photographs of him. Constable Linde seized a number of items out of the vehicle and completed paperwork for the vehicle to be impounded for excessive speed.
- [14] Constable Linde acknowledged that he had initially made the decision to turn around and follow the SUV in order to pull it over to check for winter tires, but after he did so it became apparent that the SUV was driving at excessive speed. Constable Linde said that his average speed was between 140 and 150 kilometres per hour in order to catch up to the SUV, and it took him nine minutes to get close enough to get a radar reading. Because of the number of S curves in the area where he caught up to the SUV, Constable Linde said that he decided it would be too dangerous to pull the vehicle over and so he hung back a little to wait for a better opportunity. As he did so he observed the SUV pass vehicles on the double solid yellow lines on two occasions, something he described as reckless and dangerous, putting the vehicle occupants and other members of the public in danger.
- [15] When Constable Linde pulled in behind the SUV where it had stopped at the brake check area, he observed the driver get out, vomit, and then close the door to the SUV before vomiting again. Constable Linde said that he believed that the driver had noticed him for the first time and then had shut the door to the vehicle, which he believed to be a sign of nervousness. As he approached the driver, Constable Linde noted that the first thing the

driver said to him was, "How are you doing?" which Constable Linde found odd in the context of the driver being physically sick. Constable Linde said that he also found it odd that when asked for his driver's licence the accused patted his pants with his left hand and then said that he did not have it on him. Constable Linde said that this was a sign of nervousness to him and was behaviour he had seen in persons who are nervous and trying to buy time because they do not have a driver's licence. He described it as making a gesture to make it seem like they have a driver's licence when they know they do not.

- [16] Constable Linde said that when the accused opened the door to retrieve his wallet the bear spray and unsheathed hunting knife were visible in the door pocket and it was immediately concerning to him. He testified that these are not items normally found in a vehicle and the proximity to the driver was also suspicious to him. The fact that the knife was unsheathed was also not normal in Constable Linde's view.
- [17] Constable Linde also found it suspicious that when asked who owned the vehicle Mr. Maki replied "a buddy of a buddy" and pointed to the passenger. He said that in his view this was a sign of nervousness and deceptiveness as generally people know who own the vehicles that they drive. When Constable Linde obtained the insurance papers for the vehicle and confirmed that it was registered to a company in the Lower Mainland, the passenger described it a company vehicle.
- [18] Constable Linde said that all of his observations and concerns came together at that point to form his belief that he had grounds to arrest for possession of weapons dangerous to the public peace. He said that every indicator and observation by themselves would not have been grounds for an arrest, but when taken all together in the context and what it meant to him based on his experience he formed the view that he had grounds to arrest Mr. Maki.
- [19] Constable Linde's forward-facing in-car camera video was activated during the time he was following the SUV and when he pulled it over. It also recorded his interaction with the accused. That video was entered into evidence as Exhibit 1 on the voir dire.
- [20] Under cross-examination, Constable Linde admitted that he had been the lead investigator with respect to approximately 200 drug investigations related to vehicle stops. He also acknowledged that he is trained in the Pipeline Introduction course and has also been an instructor in that course. Constable Linde said that the course teaches how, in the course of traffic duties, to look beyond a ticket and observe behaviours, verbal and nonverbal indicators suggestive of a travelling criminal.
- [21] Constable Linde also acknowledged that the original reason he turned around to follow the SUV was that he wanted to check the winter tires because it was a high-end SUV, but as he drove on he found the vehicle was driving at excessive speed. Constable Linde agreed with the suggestion of defence counsel that he did not have any particular reason to check the winter tires of this particular SUV and his decision to do so was somewhat random in nature. However, he confirmed that the excessive speed and the dangerous driving was the ultimate reason that he pulled the vehicle over. Constable Linde denied having a dual purpose when

he eventually pulled over the SUV and said that he had no preconceived notions about the vehicle or its occupants. He said that he stopped the vehicle for Motor Vehicle Act infractions.

- [22] Defence counsel challenged Constable Linde about various observations and behaviours that he found suspicious or not normal. Counsel suggested to Constable Linde that there was nothing suspicious or indicative of nervousness in closing the vehicle door while vomiting and there were other innocent explanations such as the cold or wanting privacy while vomiting. Constable Linde maintained that he found it unusual in the circumstances and not normal behaviour. Constable Linde acknowledged that the police car video in Exhibit 1 did not show the accused turn to look or make eye contact with Constable Linde prior to closing the driver side door but said that he assumed that the driver would have noticed him in his peripheral vision as he pulled up behind with the emergency lights activated.
- [23] Defence counsel further suggested that there was nothing suspicious or abnormal about the driver patting his pants pocket to see if his wallet was there and challenged Constable Linde's conclusion that this behaviour was an empty gesture and not normal. Constable Linde explained that during his time enforcing the Motor Vehicle Act he has noticed behaviours and in his experience if someone has their wallet they typically go to it and get it and do not pat their pants pocket unless they are trying to buy time because they do not have their driver's licence.
- [24] Defence counsel questioned Constable Linde about why he did not activate his emergency lights sooner, and Constable Linde responded that the distance between his police vehicle and the SUV was too great. He said that the majority of time while trying to close the distance with the SUV he could not clearly see it due to spray coming off the vehicle. He was also concerned about stopping the SUV in an area that was unsafe for the vehicle occupants and himself and was trying to pick a spot to conduct the traffic stop that offered safety for everyone.
- [25] Defence counsel suggested to Constable Linde that part of the reason he focussed on the SUV was that it was not a bush vehicle. He suggested to Constable Linde that it was a four-wheel drive vehicle built for off-roading. Constable Linde agreed that this was how the vehicle may have been marketed but in his personal experience this was a vehicle that was more of a status symbol and more often found in the Lower Mainland rather than in the north.
- [26] Defence counsel confronted Constable Linde about an observation noted in his report to Crown counsel and a suggestion that the accused did not respond to a question asked, namely, "Whose cat?" Constable Linde agreed that he had asked "Whose cat?" and the accused had answered, "His name is Little G," even though that was not the question asked. He described this as one of many little inconsistencies that suggested nervousness to him. Counsel played a different version of the in-car video, which was entered as Exhibit 3 on the voir dire, with better audio quality, and Constable Linde agreed after hearing the exchange

several times that in fact the accused did respond to the question "Whose cat?" by saying, "His," and then said, "His name is Little G." In redirect Constable Linde said that he did not hear that answer at roadside and the first time he heard that answer was during the voir dire.

- [27] Defence counsel also put to Constable Linde that during his interaction with the accused he opened the driver's side door further so that he could look inside the vehicle as the accused reached in to retrieve his wallet. Constable Linde agreed that his hand was on the door and it did move, but he denied that he moved the door in order to look inside. He took issue with the suggestion of defence counsel that by moving the door further open, he improved his angle of vision and was then able to see into the door pocket. Constable Linde maintained that he would have been able to see into the door pocket where the weapons were located even without the door moving.
- [28] The accused submits that Constable Linde breached his Charter rights in the following ways: (1) his stated intention to pull over the SUV to check for winter tires was simply a ruse to pursue a criminal investigation; (2) he illegally searched the vehicle when he opened the driver's side door to look at what was in the door; and (3) he did not have reasonable grounds to arrest the accused.
- [29] The accused submits that Constable Linde's admission that he turned around to check the winter tires on the SUV and that his decision to do so was somewhat random establishes that his traffic stop of the vehicle driven by Mr. Maki was arbitrary pursuant to s. 9 of the Charter. This submission begins with the premise that Constable Linde's decision to stop the vehicle to check for winter tires once made should be considered the reason why the vehicle was stopped. Counsel submitted that Constable Linde admitted that the only way to check for winter tires is to stop a vehicle, and therefore the vehicle stop was a foregone conclusion at that point.
- [30] Defence counsel pointed to Constable Linde's inability to cite the section of the Motor Vehicle Act that regulates the use of winter tires and his failure to activate his emergency lights sooner and his failure to pull over the SUV earlier as evidence that Constable Linde's pursuit of the SUV for a Motor Vehicle Act infraction was a ruse. He submitted that police are not permitted to employ lawful aims as a pretext to perpetuate an unlawful aim. Much of this submission appears to rely on a decision of the B.C. Provincial Court in *R. v. Afzali*, 2016 BCPC 305, which has some factual similarities to the case at bar.
- [31] In *Afzali*, the police officer stopped a vehicle that he observed was travelling just below the speed limit. He testified that he stopped the vehicle to check for driver's licence and to determine if it had winter tires. Following the traffic stop the officer queried the licence plate and learned that the vehicle was linked to 24 recent police investigations, most of which involved drugs. The officer interacted with the driver and made various observations before detaining the driver for investigation for possession of drugs. The judge found that the articulated reasons for the stop in that case were Motor Vehicle Act concerns, namely

the presence of winter tires and a driver's licence check, but when scrutinized those reasons did not support a traffic related stop. The judge noted that there was nothing unusual about the manner of driving of the accused, and winter tires were not a valid concern for the driving conditions. The judge also noted that the sequence of the officer's notes did not support any Motor Vehicle Act concerns and it was in fact the vehicle licence query showing that it was linked to 24 police investigations that in fact piqued the officer's interest, rather than any concern about Motor Vehicle Act infractions. The court found that when the officer stopped and detained the accused, he did not have any legitimate road safety or Motor Vehicle Act concerns, but rather was detaining the accused on account of the officer's hunch of criminal activities.

- [32] While there are factual similarities, there are several important differences in the case at bar. I accept Constable Linde's evidence that after he turned around to follow the SUV it took him nine minutes to get the vehicle in sight travelling at speeds averaging 140 to 150 kilometres per hour. When he was finally able to take a radar reading, the vehicle was clocked at 142 kilometres an hour and it was evident from that fact the vehicle was travelling at excessive speed. The fact that Constable Linde took the time to obtain a radar reading for the SUV would suggest that he did have legitimate road safe Motor Vehicle Act concerns. I also accept Constable Linde's evidence that he observed the SUV pass two separate vehicles on double solid yellow lines at speed, which he believed was dangerous to the public. His evidence about these observations is corroborated by the car camera video in Exhibit 1. Throughout much of the video Constable Linde's police vehicle is some distance behind the SUV and the SUV is barely visible in the distance, other than when it slows before passing the vehicle in front of it. While there were a number of driveways and at least one roadway to the right visible in the video, the road appears curvy and somewhat narrow due to the presence of snow on the fog line and Constable Linde's police vehicle does not appear to get close enough to pull over the SUV prior to the brake check.
- [33] I cannot accept the submission of defence counsel that the decision of Constable Linde to turn around and follow the SUV means that the traffic stop for that reason was a foregone conclusion. This submission ignores the evidence of Constable Linde himself that although he turned around to check the vehicle for winter tires, the ultimate reason for the stop was the driving behaviours he observed while following the SUV. To accept the defence submission would mean that regardless of any observations made in the intervening period, perhaps even including serious criminal behaviour, any subsequent traffic stop could only be for the purpose of checking winter tries simply because that was the original intention when the officer turned his vehicle around. In my view, that quite simply makes no sense.
- [34] Constable Linde's evidence was that after turning around he made observations of excessive speed and dangerous driving that were the ultimate reason why he pulled over the SUV. Those observations were corroborated by the in-car camera video. His concerns about excessive speed of the SUV and its dangerous operation were objectively reasonable. This was not a case where Constable Linde had no genuine traffic or vehicle safety concern and

was using the Motor Vehicle Act power as a pretext to conduct a criminal investigation. Unlike the case of Afzali, there is clear evidence of driving behaviours that gave rise to legitimate concerns for public safety on the part of Constable Linde, and I am not persuaded that the officer was using the Motor Vehicle Act as a ruse to investigate suspicions about criminal activity. I am satisfied that Constable Linde had a legitimate basis to stop the vehicle driven by Mr. Maki for Motor Vehicle Act enforcement purposes.

- [35] Defence counsel further argues that Constable Linde conducted an unreasonable search of the vehicle when he moved the driver's door in order to see into the door pocket of the SUV prior to the arrest of the accused. Counsel relies on Exhibit 1 and suggests that the in-car camera video shows Constable Linde deliberately moving the driver's door in order to facilitate a better view into the pocket of the door. Defence counsel further submitted that the bear spray and hunting knife were not in plain view and could not have been viewed through the unaided use of Constable Linde's senses. He suggested that Constable Linde had admitted in cross-examination that it was possible that he might not have been able to see those items if he had not moved the driver's door. Counsel also argued that it was not immediately apparent that the bear spray and knife were connected to criminal activity unless the requirements of the plain view doctrine were not met.
- [36] I should note that my review of Constable Linde's evidence was that he maintained that he was able to see the bear spray and knife in the driver's side door pocket from where he was standing even without the door moving. I was unable to find anywhere in his cross-examination that he admitted that it was possible that he might not have been able to see those items if he had not moved the door.
- [37] Although it was not referred to in counsel's submissions, the Charter application of the accused refers to the decision of the Supreme Court of Canada in *R. v. MacDonald*, 2014 SCC 3, where the Supreme Court considered the scope of police powers where officers had responded to a noise complaint at a residence. When the occupant only opened the door a few inches, an officer observed that the occupant had something behind his back. He pushed open the door further in order to see what it was and observed a handgun. The court in that case found that pushing open the door to determine what the occupant was holding constituted a search. However, the court also found that the search in that case met the test in *R. v. Waterfield* and was reasonable, authorized by a reasonable law, and carried out in a reasonable manner, and thus there was no violation of s. 8 of the Charter.
- [38] Unlike the case of *MacDonald* where the officer said that he opened -- he deliberately pushed open the door to see what was behind the occupant, in this case there is no clear evidence that the door was opened further in a manner that constituted a search. Constable Linde's evidence regarding the movement of the door was that the door moved when he put his hand on it but he did not move the door for the purpose of looking inside. He denied the suggestion that he would not have been able to see inside if he had not opened the door further, and as I have noted I was unable to find anywhere in his evidence any admission that it was possible that he might not have seen the items in the door pocket if he had not

moved the door.

- [39] In Exhibit 1, as the accused opens the door and leans into the vehicle Constable Linde steps closer to the accused, grabs the top of the door, and pushes it slightly. He appears to momentarily look down and then focusses on the accused who is partially in the vehicle looking at his wallet. The accused stands up outside the vehicle and says that he does not have his driver's licence, and Constable Linde looks down and says, "I'll take a CareCard," presumably because he is looking at the accused's wallet in his hand. At one point Constable Linde also leans down to speak to the passenger inside the vehicle.
- [40] Constable Linde's evidence was that the door moved when his hand was on it but he did not move it in order to look inside the vehicle. While counsel urged me to find that Constable Linde's action were deliberate, after viewing Exhibit 1 several times I simply cannot determine whether the movement of the door by Constable Linde was deliberate or inadvertent, and in the context of all of the evidence on the voir dire including Constable Linde's evidence I am not satisfied that the movement of the door as seen in Exhibit 1 is in fact a search. The accused's section 8 Charter challenge with respect to this event must therefore fail.
- [41] The accused also alleges that his s. 9 Charter rights were violated when he was arrested because there was no objective basis to establish that reasonable and probable grounds existed for the arrest. The arrest of Mr. Maki was made without a warrant. The authority to effect a warrantless arrest is found in the Criminal Code at s. 495(1), which provides that:

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;...
- [42] The legal principles governing the lawfulness of a warrantless arrest are neatly summarized in a decision of Madam Justice Fitzpatrick in *R. v. Janzen*, 2019 BCSC 256, beginning at para. 73 [sic, 76], which I will quote:
- [76] The burden of demonstrating that the police had reasonable and probable grounds to arrest is on the Crown: *R. v. Storrey*, [citation]. The requirement is both that the arresting officer subjectively had such grounds for arrest and that such grounds are objectively reasonable. The Court stated at 250-251:

There is an additional safeguard against arbitrary arrest. It is not sufficient for the police officer to personally believe that he or she has reasonable and probable grounds to make an arrest. Rather, it must be objectively established that those reasonable and probable grounds did in fact exist. That is to say a reasonable person, standing in the shoes of the police officer, would have believed that reasonable and probable grounds existed to make the arrest.

In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically they are not required to establish a *prima facie* case for conviction before making the arrest.

[77] The objective reasonableness of the arresting officer's grounds must be assessed from the standpoint of the reasonable person "standing in the shoes of the officer". The reasonable person is thus presumed to have the knowledge and experience of the officer or officers in question including if the matter involves the drug trade and the expertise of the officers in that field: [citations]...

The Court of Appeal stated in *R. v. Messina*, 2013 BCCA 499, at para. 24:

...that "an officer's reasons for arrest [must] be assessed from the vantage point of a prudent, reasonable and cautious police officer, similarly experienced as the arresting officer".

[78] The standard of proof required to establish reasonable grounds is "reasonable probability" rather than proof beyond a reasonable doubt or a *prima facie* case: *Debot* at 1166. Similarly, Justice Frankel noted in *R. v. Jir*, 2010 BCCA 497:

27. As has been stated many times, the "reasonable grounds" standard is not only less than that required for conviction, but is also less than the civil standard of proof.

More recently, in *Mugesera v. Canada (Minister of Citizenship & Immigration)*, [citation], the Court stated (at para. 114):

the "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities [citations omitted].

Further, as Mr. Justice Hill noted in *R. v. Sanchez* [citations]:

The appropriate standard of reasonable or credibly based probability envisions a practical, non-technical and common sense probability as to the existence of the facts and inferences asserted.

[79] It is well established that the standard of reasonableness must be met not on a "piece meal basis" [citation] but in the "totality of the circumstances" (*Jir* at para. 28).

[43] Defence counsel noted that some of the indicators and observations that Constable Linde said that he found suspicious were really innocuous behavior or in the case of his belief that Mr. Maki failed to answer the question about ownership of the cat simply wrong. He pointed to Exhibit 1 and the sequence of events as Constable Linde pulled up to where the SUV had come to a stop. Counsel submitted that it is evident that Mr. Maki did not look at Constable Linde's direction before standing up to close the vehicle door and then to resume vomiting.

He submitted that it was entirely reasonable for someone to close the door on a cold day and because they wanted to vomit in private or perhaps to prevent the cat from escaping. Counsel further submitted that it was unreasonable for Constable Linde to reject the suggestion that someone might want to vomit in private and characterized his response that if he was getting sick roadside he would "just be sick" as implausible.

- [44] Defence counsel further submitted that Constable Linde's evidence that he found it suspicious when Mr. Maki patted his pocket when asked for his driver's licence was not credible as people routinely pat their pockets when trying to locate a wallet or other item. Defence counsel argued that many of the things Constable Linde found suspicious were either so broad that they could apply to anyone or were unreasonable and based on stereotypes. He pointed to Constable Linde's evidence that he found the presence of the bear spray and the unsheathed hunting knife in the driver's door pocket to be suspicious because of the type of vehicle and that it was a status symbol that was popular in the Lower Mainland rather than a bush vehicle. He submitted that I should reject the evidence of Constable Linde as lacking credibility because he was verbose, deflected questions, argued, exaggerated Mr. Maki's nervousness and embellished the difficulty he had in stopping Mr. Maki.
- [45] I did not find Constable Linde to be verbose. While his initial answer at the beginning of his direct examination describing his involvement in the investigation was somewhat lengthy, that appeared to be to me largely because Federal Crown counsel did not interject with any questions and Constable Linde simply gave his testimony in one large bite. He was not verbose in answering the questions of defence counsel and I did not find him to be argumentative or nonresponsive to the questions asked. I also did not find that he embellished the difficulty he had in stopping Mr. Maki. On the contrary I found that Exhibit 1 confirmed his evidence that he had considerable difficulty catching up to the SUV in order to conduct a traffic stop despite appearing to be travelling at considerable speed.
- [46] With respect to Constable Linde's suspicions and when they formed grounds for his arrest of Mr. Maki, he acknowledged that many of the observations and indicators that he found suspicious by themselves would not be grounds for arrest, but when taken together in the context of his knowledge and experience they were sufficient.
- [47] Constable Linde's observations of Mr. Maki getting out of the SUV and immediately vomiting, reaching up to close the door and continuing to vomit could well be seen as suspicious given the proximity of Constable Linde's police vehicle and his evidence that his emergency lights were activated. While defence counsel suggested that this was because he wanted to vomit in private, the context was that he was vomiting in a public area next to a busy highway, which is not in any way private. Mr. Maki asking Constable Linde how he was doing, how he was doing in this context, was also somewhat unusual.

- [48] Constable Linde said that he found Mr. Maki's patting of his pant leg when asked for his driver's licence to be a sign of nervousness. While defence counsel suggested that there was nothing suspicious about the gesture, I noted in Exhibit 1 that just prior to being asked for his driver's licence Mr. Maki reached around and touched the same area of his pants while pulling them up. Having just touched the same area of his pants, the patting of his pants leg in an apparent effort to locate his wallet might well have seemed suspicious.
- [49] Constable Linde said that he observed the knife and bear spray in the door pocket when Mr. Maki opened the door to retrieve his wallet. He described his belief that these items are not normally found in a vehicle in such close proximity to the driver except for a dangerous purpose. Constable Linde articulated why he had concerns about the presence of the unsheathed knife and the bear spray in the driver's door of this specific vehicle based on his observations that this particular type of SUV is not common in the north and in his experience it is more usually seen in the Lower Mainland as a status symbol rather than associated with being in the bush and hunting. Based on his experience he said that it was unlikely that the items would be kept in that location and in that manner, that is, the knife being unsheathed, for a legitimate hunting or recreational purpose.
- [50] Constable Linde also found Mr. Maki's response to the question of who owned the vehicle to be suspicious. His response that it was owned by "a buddy of a buddy" which was something Constable Linde found to be a sign of nervousness as people generally know who own the vehicles that they drive. When Constable Linde obtained the registration papers and discovered that the vehicle was registered to a company in the Lower Mainland, it was then that the passenger said that it was a company vehicle.
- [51] I accept Constable Linde's evidence that he had subjective belief based on his experience and that all of these behaviours and indicators he observed gave him reasonable and probable grounds on which to base his arrest of Mr. Maki for possession of weapons dangerous to the public peace.
- [52] I do not accept the submission of the accused that Constable Linde's grounds were not justifiable from an objective view. The submission of defence counsel that many of the things Constable Linde found suspicious were too broad or based on stereotypes seems to be an assessment of each of the reasons forming his grounds in isolation rather than as a whole.
- [53] I have no difficulty finding that Constable Linde's reasons for arrest when assessed from the vantage point of a prudent, reasonable and similarly experienced officer were objectively reasonable. The behaviours he observed of Mr. Maki that indicated a level of nervousness, closing the door partway through vomiting, patting his pants pocket when asked for his driver's licence, his answer about the ownership of the vehicle, taken together with the bear spray and unsheathed hunting knife visible in the driver's side door pocket of a vehicle not typically associated with hunting or bush recreation, and at a time of the year when hunting is not typically pursued, would lead a reasonable person to believe that Mr. Maki had

possession of the knife and bear spray for a purpose dangerous to the public peace.

[54] In my view, the factual elements of this case when viewed cumulatively rather than in isolation provide objective support for Constable Linde's subjective belief that he had reasonable and probable grounds to make the arrest.

[55] I find that the arrest of Mr. Maki was therefore lawful and not arbitrary. Accordingly, Mr. Maki's Charter application is dismissed.

"The Honourable Madam Justice Church"

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