

CANADA / JUDGMENT

R. v. Palmer

2025 BCSC 1824

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Supreme Court of British Columbia

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2025 BCSC 1824 R. v. Palmer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Palmer,

2025 BCSC 1824

Date: 20250616

Docket: 109220-1

Registry: Kamloops

Rex

v.

Michael Wayne Palmer

Restriction on Publication: Pursuant to 648(1) C.C.C.

Before: The Honourable Justice Greenwood

Oral Ruling on Voir Dire #1

re expert evidence of Dr. Cleland

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I. Currie

D.J. McNamee

Place and Date of Trial:

Kamloops, B.C.

June 2-6, 9-13,

16-17, 20, 23-27

and 30, 2025

July 1-3, 2025

Place and Date of Judgment:

Kamloops, B.C.

June 16, 2025

- [1] THE COURT: Mr. Palmer is currently being tried for one count of murder and three counts of attempted murder in front of a jury. The Crown seeks to call Dr. Cleland and have him qualified as an expert witness to give opinion evidence as to the nature and possible effect of injuries to the soft tissue area of the neck, including vascular injuries, and on the emergency assessment and management of such injuries.
- [2] Dr. Cleland is an otolaryngologist who has extensive experience and training related to trauma suffered to the neck. The defence does not contest Dr. Cleland's qualifications and acknowledges that some expert evidence is properly admissible but contests certain aspects of the evidence and the scope of the evidence that should be allowed to go before the jury.
- [3] Dr. Cleland's evidence was heard on a voir dire and argument was made by both the Crown and the defence as to the admissibility of specific aspects of Dr. Cleland's evidence.

Dr. Cleland's evidence

- [4] Dr. Cleland testified as to the structure of the neck and the danger of penetrating wounds to the arteries, veins, and airways that run through the neck. He testified that a nick to the carotid artery could be a fatal injury. Dr. Cleland also testified to how neck injuries are treated and interpreted the medical records related to each of the alleged victims of the attempted murder counts.
- [5] Dr. Cleland testified that any penetrating injury to the neck is treated as potentially life threatening, until it is determined otherwise. He testified as to the injuries that each of the victims suffered, based on their medical records.
- [6] His evidence was that Mr. Crookes and Mr. Gronberg's injuries were potentially life-threatening, and that Mr. McKay's injuries were life-threatening.

- [7] Dr. Cleland was then taken through photographs of the injuries on each of the three victims. The photos did not form part of his expert report. He had seen them for the first time the morning of his testimony. He was asked to circle the injuries on each photo.
- [8] In cross-examination, he confirmed that all penetrative injuries to the neck are treated as life-threatening, and that medical investigation can reveal otherwise or medical treatment can reduce the risk. For example, he testified that after medical treatment, it was determined that Mr. Crookes' injury to his neck was not life threatening. He testified that once the medical facts were gathered, Mr. Gronberg was never close to death or "on death's door". Mr. McKay required surgery to minimize the risk but, after surgery, his condition improved, and he was on a trajectory toward wellness.
- [9] I would describe Dr. Cleland's evidence as falling into four basic categories:
- a) the anatomy and structure of the neck;
 - b) the potential for injury and death when there is a transgression of the skin and penetration into the soft tissues of the neck, including the medical approach to penetrating neck injuries;
 - c) interpretation of medical records relating to each of the alleged victims that will be tendered into evidence under the Canada Evidence Act, RSC 1985, c C-5; and
 - d) a review of photos of each of the alleged victims that will be tendered into evidence and identification of the location of injuries as depicted in the photos.

Position of the parties

- [10] The Crown says the evidence meets all the Mohan criteria. It argues that the anatomy of the neck and the potential for injury or death is relevant to whether Mr. Palmer had a specific intent to kill in support of the attempted murder charges in Counts 2 through 4. It points to Mr. Palmer's statement that has been admitted into evidence that he targeted the carotid artery to "disable" the victims.
- [11] The Crown says the jury is entitled to an understanding of the anatomy of the neck and the potential effects of injuries to the carotid artery to assist them in evaluating whether Mr. Palmer had the intent to kill. The Crown says it is necessary and relevant to have Dr. Cleland refer to the photos of the victims and identify what the injuries actually looked like. The Crown says it cannot assume the jury will be able to identify an injury in the photos or identify pieces of medical equipment or what they are looking at.
- [12] Additionally, the Crown says Dr. Cleland's evidence is admissible in relation to the lesser included offence of aggravated assault to determine if the victims suffered a "wound" or "endangered the life" of the complainant.

- [13] The defence does not contest the admissibility of the evidence generally, but expressed concerns about:
- a) Dr. Cleland going over the injuries with the use of the photos;
 - b) unnecessary detail about potential injuries that go beyond the actual injuries in this case;
 - c) repetition of the fact that all injuries to the neck are treated as life threatening; and
 - d) aspects of the expert evidence that are either irrelevant or unnecessary.
- [14] The defence concedes that the Crown is permitted to call expert evidence about the anatomical structures of the neck and that the jury is entitled to know how other various injuries might arise.
- [15] As examples, the defence pointed to evidence that the neck connects the head and the chest as unnecessary, and took the position that detailed evidence about potential medical issues and treatment beyond the medical issues and treatment that actually arose would be prejudicial.
- [16] While the defence concedes that the expert evidence is of some assistance, it points out that there is no objective element to mens rea, and that the issues in this case will require the jury to determine what Mr. Palmer meant in various statements he made to the police, not whether it was medically accurate.
- [17] With respect to the count of aggravated assault, the defence says the jury does not need assistance to conclude that the actus reus was made out. It points to the judge's gatekeeper role to ensure the jury is not overwhelmed by expert evidence on a point that is manifest.
- [18] The defence contends that the mischief of Dr. Cleland's evidence, if it is allowed to go before the jury without restriction, is that it is going to invite the jury to ignore the real issue and focus instead on the fact that, from a medical point of view, all injuries to the neck are treated as life threatening, which the witness repeatedly testified to and which is also contained in an addendum marked as an exhibit.

Legal framework

- [19] The legal framework for the admissibility of expert evidence is not in dispute. It is summarized in *R. v. Bingley*, 2017 SCC 12 at paras. 13-17, *White Burgess Langille Inman v. Abbott and Haliburton*, 2015 SCC 23, and *R. v. Sekhon*, 2014 SCC 15 at paras. 43-46.
- [20] The authorities contemplate a two-stage inquiry. First, the proposed evidence must meet the threshold Mohan factors which are:
- a) relevance;
 - b) necessity;
 - c) the absence of an exclusionary rule; and

d) a properly-qualified expert with special expertise.

[21] Relevance at the threshold stage refers to logical relevance: White Burgess at para. 23.

[22] If the evidence does not meet the threshold criteria, it should not be admitted. However, even if it does meet the criteria, the trial judge retains a discretion to exclude the evidence if the risks in admitting the evidence outweigh its benefits. The second-stage process is well summarized by Cromwell J. in White Burgess:

[24] At the second discretionary gatekeeping step, the judge balances the potential risks and benefits of admitting the evidence in order to decide whether the potential benefits justify the risks. The required balancing exercise has been described in various ways. In Mohan, Justice Sopinka spoke of the "reliability versus effect" factor, while in J.L.J., Justice Binnie spoke about relevance, reliability, and necessity being measured against the counterweights of consumption of time, prejudice, and confusion. Doherty J. summed it up well in Abbey, stating that the trial judge must decide whether expert evidence that meets the preconditions to admissibility is sufficiently beneficial to the trial process to warrant its admission, despite the potential harm to the trial process that may flow from the admission of the expert evidence.

Analysis

[23] The issues raised on the voir dire relate to the relevance and necessity of the proposed evidence and to the trial judge's gatekeeping role. There is no issue of any exclusionary rule, nor any issue as to Dr. Cleland's expertise.

Stage 1

Is the proposed evidence relevant and necessary to assist the jury?

The structure and anatomy of the neck and evidence of the potentially life threatening nature of injuries to the neck

[24] Considering the relevant principles, I am satisfied that Dr. Cleland should be permitted to testify about the anatomy and structure of the neck and the potential dangers that arise from penetrating wounds to the neck. In my view, providing the jury with an understanding of the various structures of the neck and risks posed by injuries to the neck is relevant evidence that will assist the jury, in combination with the medical records and other evidence, in determining the nature of the stab wounds that were inflicted in the alleged crime.

[25] While some of Dr. Cleland's evidence is, as the defence points out, obvious, it has raised no objection to Dr. Cleland stating the obvious, and I see little harm to the trial process in Dr. Cleland articulating things that are well known while giving his evidence.

- [26] In my view, parts of his evidence are not obvious and are necessary to assist the jury in a full understanding of the wounds that were suffered. The anatomy of the neck is also relevant and necessary background information for the jury to properly understand Dr. Cleland's interpretation of the medical records.
- [27] In my view, the consequences of a nick or cut to the carotid artery is properly the subject of expert evidence. While most people will have some understanding of the carotid artery and its importance, Dr. Cleland's evidence includes information that would be outside of the knowledge and experience of the average jury. He explained, for example, the different structures between arteries and veins and the different problems that result from penetrating wounds in those areas, including the carotid artery.
- [28] In the evidence that has already been tendered in this case, Mr. Palmer made at least four statements about the carotid artery. He stated he tried to nick the carotid artery and get rid of these people. He later stated, "I just tried to get a carotid artery on every person to disable them," and later still described the carotid artery as "the single best disabler of people." Finally, when asked if he thought it could kill somebody when you cut their carotid artery, he stated, "I thought it would kill. I don't think it would kill everything out there though."
- [29] In my view, the jury is entitled to an accurate understanding of the consequences of an injury to the carotid artery as background evidence against which to evaluate the stabbing acts that they find took place, if any, and to consider the question of intent, including whether Mr. Palmer intended to kill or intended to merely disable. In my view, an accurate understanding of the potential consequences of Mr. Palmer's alleged actions is relevant and necessary evidence within the meaning of those terms in the jurisprudence. Dr. Cleland's evidence will enhance rather than distort the fact-finding process.
- [30] I agree with the Crown that the proposed evidence is also relevant to whether the alleged acts endangered the life of the complainant, which is one of the methods by which an act may qualify as an aggravated assault.
- [31] As defence counsel noted, the jury will be called upon to interpret what Mr. Palmer meant in his statements about the alleged acts but, in my view, that is not the only evidence the jury is entitled to rely on when considering mens rea or intent. The focus of intent is what is in someone's mind, but a finding of intent can be inferred from the surrounding circumstances and not only on the basis of what an accused may have said.
- [32] The jury will also have to evaluate the nature of the alleged stabbings that took place, their force, and the injuries that resulted. It is open to the jury to consider the expert evidence related to the injuries that were suffered in determining what took place and in looking at the question of what inferences can properly be drawn from the consequences of Mr. Palmer's alleged actions or, alternatively, what consequences from his actions might have been unpredictable and therefore not support an inference of intent.

- [33] There are aspects of Dr. Cleland's evidence that, when looked at in isolation, arguably do not meet the strict test of necessity, but help to explain his evidence. For example, his assertion that all penetrating neck injuries are treated as life threatening until it is established otherwise would appear to be grounded in common sense and obvious prudence. However, this aspect of Dr. Cleland's testimony helps explain his evidence as to the nature of the injuries that were suffered by the alleged victims in this case, and the medical steps that were taken. I consider it a necessary ancillary aspect of his evidence, as opposed to the focus of his evidence, and it has relevance and sufficient necessity in the context of the whole of his evidence to be admitted.
- [34] Having said that, I do not think it is necessary for the Crown to continually repeat through the expert that all penetrating neck injuries are treated as life threatening. While it is reasonable for the jury to know that, it is far more useful for the jury to understand what the medical information shows about the actual injuries that were suffered. I would admit Dr. Cleland's testimony about the basic approach to penetrating neck injuries, but if there is undue repetition or specific concerns arise about the manner in which the evidence is given, I will consider any objections of that nature that are raised by the defence.
- [35] Beyond excessive or undue repetition, there is little prejudice to the defence in having Dr. Cleland explain the medical approach to treatment when one considers that the combined effect of his evidence in chief and his cross-examination is that penetrating neck injuries are always treated as potentially fatal, but may turn out not to be or may be successfully treated.

Interpretation of the medical records of each of the alleged victims

- [36] I have no hesitation in concluding that Dr. Cleland is entitled to give opinion evidence interpreting the medical records and explaining the injuries of each of the alleged victims. There is no dispute that the medical records are admissible. Those records are full of complex medical terms that are beyond the knowledge and experience of an average juror and Dr. Cleland is well qualified to explain the injuries accurately to the jury. In that respect, Dr. Cleland's evidence is both relevant and necessary.

Identifying the stab wounds in the photos of the alleged victims

- [37] I reach a different conclusion when it comes to Dr. Cleland identifying injuries as they appear in the photographs that are already in evidence or will be put into evidence. In my view, Dr. Cleland's identification of the location of injuries on the photos and his circling of them with a pen is not necessary under Stage 1 of the admissibility framework. Dr. Cleland's evidence did not add anything of significance that the jury could not readily determine on its own by looking at the pictures or hearing from the police officer who took the photos or the victims who either have or may be able to testify about their own injuries as depicted in the photos.

- [38] In my view, what was missing was any specialized skill, experience, or knowledge that the jury would not itself possess. The photos are of sufficient quality that the injuries are clearly visible, and the jury can be asked to draw whatever inference they want from the photos without the assistance of expert evidence. Dr. Cleland did not identify any significant medical aspect of the injuries in his review of the photos in contrast to, for example, his interpretation of the medical records.
- [39] The law is clear that if, on the proven facts, a jury can draw its own conclusion about a matter without assistance, then the opinion of an expert is unnecessary: Sekhon at para. 44.
- [40] While the Crown sought to draw a parallel between Dr. Cleland's evidence as to what is depicted in the photos and any other factual witness, in my view that ignores the prejudice associated with repetitively drawing the injuries to the jury's attention and having an expert with impressive credentials accentuate the point. While I would not want to exaggerate that risk here, I am satisfied such a procedure has the potential to distort the fact-finding process or clothe ordinary evidence under the guise of expert evidence.
- [41] I find that Dr. Cleland's evidence about the photos does not meet the criteria for admissibility under Stage 1. Were it necessary to do so, I would exercise my discretion to exclude the evidence under Stage 2 as well.
- [42] Thus, I find that Dr. Cleland is not entitled to go over the photos and identify the location of the injuries for the jury. If there is a specific medical aspect of any of the photographs that requires expert evidence and would assist the jury, I would leave it open to the Crown to raise that issue before Dr. Cleland takes the stand. Based on the evidence on the voir dire, however, there is no necessity for Dr. Cleland to go over the photos.

Stage 2

Should the evidence or aspects of the evidence be excluded under the second-stage analysis?

- [43] Generally speaking, I am satisfied that the benefits of the evidence I have identified that meets the Mohan criteria generally outweigh the risks of admitting the evidence. In my view, this is not a case where the jury will be overwhelmed by Dr. Cleland's qualifications or evidence. His evidence was relatively straightforward, and he made reasonable concessions in cross-examination in relation to the injuries that were suffered in this case.
- [44] There is no significant risk in this case that the jury will not be able to make an "effective and critical assessment of the evidence" or that it will not "be able to use its 'informed judgment,'" or that it will "simply decide the case on the basis of 'an act of faith' in the expert's opinion": White Burgess at para. 18.

- [45] Dr. Cleland's evidence is only one relatively small aspect of the case. The jury will also be weighing and considering the accounts of several civilian witnesses that were present at or around the time of the alleged stabbings. They will be evaluating statements made by Mr. Palmer, and they will have the benefit of counsel's submissions and the instructions on the law that will focus the jury's mind on the proper issues. It is simply not realistic to think that the jury would be overwhelmed by the expert evidence in the overall context of this case.
- [46] I would note, as well, that the expert evidence in this case is not such as to be immune from cross-examination. As cross-examination on the voir dire revealed, Dr. Cleland's evidence leaves room for an effective cross-examination that puts his evidence in its proper context. His evidence does not usurp the role of the jury on the ultimate issue they will be asked to decide.
- [47] Many of the other recognized dangers do not arise. There is no inordinate time or expense associated with his evidence, and it is not based on junk science or novel theories or on material that will not otherwise be proven before the jury.
- [48] I do not accept the defence argument that Dr. Cleland's evidence will invite the jury to ignore the real issue and focus instead on the fact that, from a medical point of view, all injuries to the neck are treated as life threatening. The distinction between medical treatment of injuries to the neck generally and the actual injuries suffered by each of the victims in this case are clear from Dr. Cleland's evidence and will not be lost on the jury. That message can be reinforced, as well, during final instructions to the jury and any undue repetition of the evidence that all injuries to the neck are treated as life threatening can be curtailed if necessary.

Miscellaneous specific issues raised by the defence

- [49] While I would not exclude the evidence under Stage 2, I will address some of the specific concerns identified by the defence in my role as the gatekeeper of the evidence and to ensure the boundaries of the proposed evidence minimize any risk to the trial process.
- [50] With respect to Dr. Cleland's evidence that the neck connects the head and chest, I agree that no expert evidence is necessary to explain that basic fact. While it might be best avoided, the manner in which that evidence arose had more to do with the way in which the questions were asked than any special relevance or necessity in the evidence. I do not see any significant harm arising from the witness stating an incontrovertible fact as context for the remainder of his evidence. I would leave it to Crown counsel to structure examination in chief of Dr. Cleland as it sees fit.
- [51] I agree with the defence that there is a danger of eliciting too much detailed information about potential injuries that never arose on the facts of this case. In my view, that would tend to distract the jury from its task. While a basic explanation of the anatomy of the neck and the potential damage that can be caused by being stabbed or cut in the neck is admissible, including the potential for such injuries to be fatal, I do not consider detailed

evidence about the treatment of injuries that did not arise on the evidence as relevant or necessary.

- [52] I would direct the Crown to focus on the potential injuries that can be caused, the medical approach to neck injuries generally, and the injuries and treatment related to each of the victims in this case. If the evidence strays too far from those areas of admissibility, I will address any objections that arise.
- [53] Turning to Dr. Cleland's addendum report, I am not satisfied that the report adds anything to his evidence. All of the matters that are addressed in the addendum report were covered in the course of his examination in chief. By itself that is not a reason to exclude the addendum, but the effect of the addendum is simply to reinforce Dr. Cleland's evidence that all penetrating neck injuries are approached as serious, and to underline their potential lethality. The repetition of that evidence in writing and without clarification, could have the effect of focusing the jury on potential injuries rather than actual injuries.
- [54] Given that Dr. Cleland is entitled to testify about the potential life threatening nature of injuries to the neck (subject to cross-examination), I would exercise my discretion to exclude the addendum. In my view, in doing so, I am not depriving the Crown or the jury of any important or admissible evidence. I am doing so to ensure that the expert evidence will be put in its proper context and will not be unnecessarily repeated. I would also note that the addendum includes a lot of technical language that, in my view, will distract rather than assist the jury.
- [55] If the glossary of terms in the addendum is considered helpful by the Crown then, subject to any objections that might arise, Dr. Cleland can prepare a glossary of terms and adopt that in his evidence to assist the jury.
- [56] Finally, as I have already indicated, while I am satisfied that Dr. Cleland's evidence that all penetrative injuries to the neck are approached as life threatening is properly admissible, I accept that there is a danger in unduly repeating that throughout the expert evidence, which could have the effect of misleading the jury.
- [57] If there are concerns about the prolix nature of the examination in chief on that topic or repetition of evidence relating to the life-threatening nature of all penetrative injuries to the neck, I will address any objections that arise based on the way the evidence unfolds.

Conclusion

- [58] In general, I am satisfied that the evidence of Dr. Cleland is admissible and that its probative value is not outweighed by the risks associated with its admission. I will admit the evidence, subject to the limitations I have expressed in these reasons.

"Greenwood J."

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