

CANADA / JUDGMENT

R. v. Singh

2025 BCSC 2094

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2094 R. v. Singh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Singh,

2025 BCSC 2094

Date: 20251028

Docket: 35724

Registry: Vancouver

Rex

v.

Edwin Vikash Singh

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Before: The Honourable Justice Doyle

Reasons for Judgment

Voir Dire #4 - Voluntariness of Accused's Statement

Counsel for the Crown:

T. M. Maclean

Counsel for the Accused:

J. Dosanjh

Place and Date of Trial/Hearing:

Vancouver, B.C.

March 5, 6, 7 and 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 28, 2025

Table of Contents

Introduction.. 3

Background.. 3

Evidence. 3

Law.. 7

Submissions. 7

Analysis. 9

Introduction

- [1] On March 14, 2025, I rendered my decision that the statement of the accused to the police on December 1, 2021, had not been proven voluntary beyond a reasonable doubt, with reasons to follow. These are those reasons.

Background

- [2] The Crown seeks admission of a statement of the accused for the purpose of cross-examination in the event the accused testifies at trial.
- [3] On this voir dire, the Crown must prove the statement is voluntary beyond a reasonable doubt. That is the sole issue before me for determination. The accused raises no issue regarding the Charter of Rights and Freedoms.
- [4] This voir dire was heard, along with other preliminary applications, in advance of the scheduled commencement of the trial in August this year.
- [5] The accused is charged with one count each of sexual assault and sexual touching of KM on December 2, 2020 in Vancouver, contrary to sections 271 and 151, respectively, of the Criminal Code, R.S.C. 1985, c. C-46. KM was 14 years old on the date of the allegations.

- [6] There is no issue that the accused was arrested just under a year later, on December 1, 2021. Later that day he was interviewed by Det. Cst. Doll, then of the Vancouver Police Department. That interview, or statement, was video recorded. The total length of the statement is just under two hours, although for considerable periods of time the accused was alone in the interview room.

Evidence

- [7] The Crown called three police officers: Cst. Addison; Cst. De-Guzman and Det. Cst. Doll.
- [8] Cst. Cavan, an officer apparently present with Cst. Addison during some of her dealings with the accused, did not testify.
- [9] The following items were admitted in evidence:
1. An audio of Cst. De-Guzman's dealings with the accused prior to the interview by Det. Cst. Doll: Ex. 1
 2. A transcript of Det. Cst. Doll's interview of the accused: Ex. 2.
 3. The video recording of Det. Cst. Doll's interview of the accused: Ex. 3.
- [10] The accused called no evidence on the voir dire.
- [11] I will summarize the evidence briefly.
- [12] On the morning of December 1, 2021, VPD Cst. Addison and her partner Cst. Cavan were tasked with arresting the accused. The police had information the accused would be meeting a person to whom he was obliged to report. The officers attended the location in one police vehicle, and waited outside on foot.
- [13] Cst. Addison had not met the accused before, but identified him when he exited the building using a photograph she had. Upon recognizing the accused, Cst. Addison approached him, confirmed his identity and arrested him for sexual assault and sexual interference at 11:23 am. She handcuffed the accused, provided his Charter rights verbatim from her card and gave him the "official warning". Cst. Addison testified she provided him his Charter rights at 11:33 am.
- [14] Cst. Addison thought the accused would have been searched, but could not confirm that she searched the accused. She had no recollection of any words said during any search, and no recollection of any interactions between Cst. Cavan and Mr. Singh.
- [15] Cst. Addison essentially had no recollection of the matter after she provided the Charter rights at 11:33 am. She said she wanted to say the accused was transported by the police wagon, but could not due to the passage of time. She said it was possible she and Cst. Cavan transported the accused to the Gravelly Street police station.

- [16] She said she recalled having no further dealings with the accused after the scene of the arrest. She had no recollection of being at the Gravely Street police station or meeting Cst. De-Guzman there at 12:05 pm.
- [17] As mentioned, Cst. Cavan was not called to testify.
- [18] Cst. De-Guzman testified that he was at the Gravely Street police station, which is where the Sex Crimes Unit is based. He met the accused in the main lobby at that location.
- [19] Cst. De-Guzman says that the accused was handcuffed and in the custody of Cst. Addison. The time was 12:05 pm. Cst. De-Guzman did not know how the accused got to the Gravely Street station - he was asked to go to the lobby to meet the accused and did so.
- [20] Cst. De-Guzman's task was to read an arrest script prepared by Det. Cst. Doll.
- [21] Cst. De-Guzman testified the accused was in handcuffs when he met him. He took the accused to what he described as a semi-private room off the main lobby of the police station. It had a door, though the walls of the room did not extend all the way to the ceiling. He read the script, though the accused interrupted at times with questions. This occurred shortly after he met the accused at 12:05 pm.
- [22] Cst. De-Guzman unequivocally recalled Cst. Addison being there. He initially indicated Cst. Cavan was present, but ultimately said he had "no idea" if Cst. Cavan was there.
- [23] The audio was played in court and marked Ex. 1. It is hard to hear at times due to apparent background noise. However, one can hear Charter 10(a) and (b) being read and the accused essentially responding that he had a lawyer, does not want to speak to the lawyer now and does not know who KM is.
- [24] Cst. De-Guzman is heard giving the accused what is often called the "official warning" or "police warning", in this case in the form of "you are not obliged to say anything, but anything you say can be used in evidence". The accused responded that he understood.
- [25] At one point, the accused asks Cst. De-Guzman if he will be released.
- [26] At about 4:48 of the audio, Cst. De-Guzman recognized Cst. Addison's voice when he asked her for the key to the handcuffs so he could remove them. This was after the arrest script was read.
- [27] After removal of the handcuffs, Cst. De-Guzman took the accused from the lobby floor to the 5th floor for the interview. The video (Ex. 3) captures the accused being placed into the 5th floor interview room at approximately 12:15 p.m.
- [28] Cst. De-Guzman had no direct dealings with the accused after placing him in the interview room. Cst. De-Guzman did observe the interview from a monitoring room.

- [29] Det. Cst. Doll conducted the interview, and was the only officer who directly dealt with Mr. Singh after he was placed in the interview room until he left that room at the conclusion of the interview. Mr. Singh did not leave the room at anytime until the conclusion of the interview. All interactions between the accused with Det. Cst. Doll in the interview room were captured on the video, with audio.
- [30] At times Mr. Singh was left alone in the room, sometimes for extended periods. During many of those periods, Mr. Singh appeared to be sleeping or trying to sleep, all while sitting in the chair at the desk. At times he appears to awaken, sometimes with a jolt, and then returns to sleep or rest.
- [31] On a few occasions, Mr. Singh speaks to himself, there being no one else present, although the audio captures his words. Mr. Singh was initially advised by Cst. De-Guzman that he may be audio and video recorded.
- [32] During the statement, Mr. Singh is shown various documents, which are Exhibit 4. These include a photo of KM, a Facebook screen shot, cell phone tower evidence relevant to a phone the police allege is his and cell phone records for that same phone obtained by a production order.
- [33] During the statement, including the references to that documentary evidence, Mr. Singh makes various comments.
- [34] Mr. Singh basically denied the allegations. However, in the course of so doing he made statements about his phone, his phone number, his location on December 2, 2020 and other matters. Mr. Singh also made various statements about the photograph, Facebook screen shot and cell phone documents.
- [35] Without elaborating at this stage of the matter, some of these statements no doubt underly Crown Counsel's rationale for seeking admission of the statement for cross-examination purposes if Mr. Singh testifies.
- [36] Despite the significant portions when Mr. Singh is alone in the room and either asleep or resting, during his verbal communications with Det. Cst. Doll he is responsive. He does not appear confused. He is at times emotional, and at other times adamant of his innocence. He interacts appropriately. In general, his answers are responsive and the points he makes are clear.

Law

- [37] The law on this application is not in issue. Both counsel rely upon *R. v. Oickle*, 2000 SCC 38, and other authorities relevant to the submissions they made.

Submissions

[38] Crown Counsel submits that the statement is voluntary, and is the product of an operating mind. He submits that Mr. Singh was not treated in an oppressive manner, and was not the recipient of any promises, inducements or threats. He notes that although Mr. Singh spent much time sleeping or resting, when he was not he was fully responsive, engaged and aware of his circumstances as a person under arrest and investigation for the alleged offences.

[39] Crown Counsel notes that Mr. Singh was asked several times, before and during the video taped interview, if he wished to speak to counsel. At all times Mr. Singh indicated he did not wish to do so. Crown Counsel also notes that Mr. Singh was given the "official warning" by both Cst. Addison and Cst. De-Guzman, the latter being clearly heard on the audio (Ex. 1).

[40] Crown Counsel notes that early in the interview the following exchange occurred:

Det. Doll: M'Kay. First of all, I gotta ask you a couple of legal questions. First of all, you interacted with different police officers and a probation officer today. Did anybody make any threats or promises to you?

Mr. Singh: What is

Det. Doll: Like threatens, threats, like you better talk to the cops or else this will happen.

Mr. Singh: No.

Det. Doll: Or you better, if you talk to the cops, something good will happen.

Mr. Singh: Uh, no, nobody did. This is my first time hearing about this and I'm shocked myself. I just wanna shoot myself, man.

[41] Crown Counsel does acknowledge a gap in the evidence from the point at which Cst. Addison provided the Charter rights to Mr. Singh at 11:33 am to the point Cst. De-Guzman meets Mr. Singh and Cst. Addison at 12:05 pm in the lobby of the VPD station on Gravely Street.

[42] Counsel for Mr. Singh submits that the Crown has not proven voluntariness beyond a reasonable doubt, and that accordingly the statement cannot be used for cross-examination in the event Mr. Singh testifies.

[43] In addition to the 30 minute gap, he notes that Mr. Singh was clearly referencing suicide, by shooting himself, early in the interview. Later in the transcript, Det. Cst. Doll seeks to confirm that the accused will not hurt himself (p. 46). Counsel submits that Det. Cst. Doll knew that Mr. Singh was emotionally vulnerable.

[44] Counsel submits the police also knew Mr. Singh was at the time homeless and a drug user. He notes Mr. Singh was falling asleep routinely during his time in police custody, often for extended periods when he was left alone in the room.

- [45] Counsel notes that although enquiring about his release status, Mr. Singh was not told he would be released until the interview was essentially over (p. 47). Counsel points to Det. Cst. Doll telling the accused multiple times prior to that words to the effect that the accused "needed" to keep talking to the officer.

Analysis

- [46] The real concern in this case is the gap of 30 minutes between Cst. Addison's last recollection at 11:33 am and Cst. De-Guzman meeting the accused and Cst. Addison at 12:05 pm at the Gravely Street police station.
- [47] Cst. Addison effectively has no recollection after 11:33 am. She does not even know if she went to Gravely Street station - that evidence comes solely from Cst. De-Guzman who saw her there and took custody of Mr. Singh from her. Cst. Addison does not know who transported the accused from the arrest location, nor does she know in what kind of police vehicle.
- [48] Cst. Cavan, Cst. Addison's partner on patrol that day, did not testify.
- [49] In *R. v. Holmes*, 2002 62 O.R. (3d) 146 (ONCA), application for leave dismissed April 17, 2023, SCC No. 29542, Justice M. Rosenberg for the Court addressed what he referred to as a "gap in the evidence" at para. 15. The Court continued at paragraph 16:
- [16] In my view, the trial judge misdirected himself with respect to the burden of proof of voluntariness and erred in holding that the Crown had discharged its burden of proof by showing that the appellant had access to counsel. The leading case in this province on this issue is *R. v. Koszulap* (1974), 1974 CanLII 1461 (ON CA), 20 C.C.C. (2d) 193, 27 C.R.N.S. 226 (Ont. C.A.). In that case, the accused was held in a police cell for about 22 hours before being questioned concerning a break-in for which he had been arrested. About two hours later, he made a further statement about a theft. The appeal concerned the admissibility of that latter statement. The prosecution failed to adduce evidence concerning the questioning of the accused about the break-in, at the time of his arrest and when he was interviewed the following day. However, the holding of the court that the Crown had failed to prove voluntariness did not turn solely on that gap in the record. The court was concerned about failure to show how the accused was treated in the 22 hours that he had been held in police custody. At p. 194 C.C.C., Arnup J.A. expressed his concern in these terms:

In this particular case there were substantial portions of the 24-hour period about which none of the police officers who gave evidence on the voir dire could have any personal knowledge; they were either off duty or away from the detachment on police duties. It was, in my view, incumbent on the Crown to show affirmatively that the accused was properly treated, and not questioned, if that were the fact, or to show the facts, if they were otherwise. This was not a difficult or unreasonable task, but it was not done. The statement made should therefore not have been admitted.

(Emphasis added)

[17] Martin J.A. also described the burden on the Crown at pp. 197-98 C.C.C.:

In my view, the officer in charge of the detachment should have been called as a witness on the voir dire to give evidence as to whether any other police officer had been in contact with the appellant in the interval and, if so, evidence should have been given as to what transpired. Evidence should also have been given as to the conditions under which the appellant was held and what he had received in the way of food and drink during the time he was held in custody.

The onus was upon the prosecution to prove affirmatively all the surrounding circumstances leading up to the making of the confession. It was of particular importance that such onus be completely satisfied having regard to the [page153] lengthy period that the appellant was held in police custody prior to the making of the confession.

(Emphasis added)

[18] Further, in words that could apply equally to this case, Martin J.A. held at p. 198 C.C.C.:

The burden of proving that a confession was made voluntarily is not discharged by evidence that it was preceded by a caution and by the evidence of the police officer who obtained the statement that it was not induced by threats or promises. All the surrounding circumstances must be examined in order to enable the Court to determine whether the statement was made voluntarily.

(Emphasis added)

[19] Similarly, in this case, the prosecution could not prove that the appellant's statement was voluntary simply by proof that the accused had been advised of his right to counsel and consulted with counsel. The appellant's counsel was neither present during the 16 hours the appellant was held in police custody nor as the questioning extended late into the night. Obviously, the prosecution could not adduce any evidence about the legal advice the appellant received from his counsel. To discharge its burden, the prosecution, in some way, had to account for the lengthy period that the appellant was held in custody.

[50] The Court noted the Crown's submissions in Holmes at para. 23:

[23] Mr. McInnes on behalf of the Crown makes two submissions to support the trial judge's decision. First, relying upon the decision of the Manitoba Court of Appeal in *R. v. Genaille* (1997), 1997 CanLII 4333 (MB CA), 116 C.C.C. (3d) 459, 118 Man. R. (2d) 114 (C.A.), he argues that the prosecution called every legally significant witness who had contact with the appellant. Second, relying upon *R. v. Oickle*, he argued that since the appellant did not confess to the crimes, this was proof in and of itself that no police officer induced the appellant to falsely confess. Thus, there was no infringement of the rule against admitting involuntary confessions. I will deal with each of these submissions.

- [51] The Court notes at para. 24 that on the facts in *Genaille* the accused was in custody in a provincial correctional facility before being transferred to police custody for the statement. The accused had argued that the Crown did not call the correctional officers who transferred the accused to police custody for the separate police investigation.
- [52] Continuing at para. 25 the Court stated:
- [25] The facts in this appeal are different. During the 16 hours before the interview, the appellant was in the custody of the police force investigating the fires for which he was under arrest. No explanation was provided for why he was not taken before a justice and no account was offered for the time that he was in police custody.
- [26] Mr. McInnes's second point turns on the policy behind the voluntariness rule to protect against conviction of an accused on the basis of a false confession as explained by Iacobucci J. in *R. v. Oickle* at paras. 32 and 57:

As I will discuss below, the confessions rule is concerned with voluntariness, broadly defined. One of the predominant reasons for this concern is that involuntary confessions are more likely to be unreliable. The confessions rule should recognize which interrogation techniques commonly produce false confessions so as to avoid miscarriages of justice[.]

.....

In summary, courts must remember that the police may often offer some kind of inducement to the suspect to obtain a confession. Few suspects will spontaneously confess to a crime. In the vast majority of cases, the police will have to somehow convince the suspect that it is in his or her best interests to confess. This becomes improper only when the inducements, whether standing alone or in combination with other factors, are strong enough to raise a reasonable doubt about whether the will of the subject has been overborne.

(Emphasis added)

- [27] Mr. McInnes argues that it is apparent that the appellant's will was not overborne by anything said or done during the 16 hours because he did not in fact confess. To the contrary, the appellant maintained his innocence throughout, notwithstanding a lengthy and skilful interrogation. Thus, even if something improper was said or done during the 16 hours, it obviously could not have had any impact upon the appellant's decision whether or not to confess.
- [28] I cannot accept this submission. The voluntariness rule applies to all statements made by an accused to police officers that the accused believes to be persons in authority. See *R. v. Erven* (1978), 1978 CanLII 19 (SCC), [1979] 1 S.C.R. 926, 44 C.C.C. (2d) 77, *R. v. Piche*, 1970 CanLII 182 (SCC), [1971] S.C.R. 23, 11 D.L.R. (3d) 700, and *R. v. Sweezey* (1974), 1974 CanLII 1427 (ON CA), 20 C.C.C. (2d) 297, 27 C.R.N.S. 163 (Ont. C.A.). In *Oickle*, Iacobucci J. was careful to point out at para. 71 that a trial judge could not [page156] make a proper determination of whether a statement was voluntary without understanding all of the circumstances:

Again, I would also like to emphasize that the analysis under the confessions rule must be a contextual one. In the past, courts have excluded confessions made as a result of relatively minor inducements. At the same time, the law ignored intolerable police conduct if it did not give rise to an "inducement" as it was understood by the narrow Ibrahim formulation. Both results are incorrect. Instead, a court should strive to understand the circumstances surrounding the confession and ask if it gives rise to a reasonable doubt as to the confession's voluntariness, taking into account all the aspects of the rule discussed above. Therefore a relatively minor inducement, such as a tissue to wipe one's nose and warmer clothes, may amount to an impermissible inducement if the suspect is deprived of sleep, heat, and clothes for several hours in the middle of the night during an interrogation: see Hoilett, *supra*. On the other hand, where the suspect is treated properly, it will take a stronger inducement to render the confession involuntary. If a trial court properly considers all the relevant circumstances, then a finding regarding voluntariness is essentially a factual one, and should only be overturned for "some palpable and overriding error which affected [the trial judge's] assessment of the facts": Schwartz v. Canada, 1996 CanLII 217 (SCC), [1996] 1 S.C.R. 254 at p. 279, 133 D.L.R. (4th) 289 (quoting Stein v. The Ship "Kathy K", 1975 CanLII 146 (SCC), [1976] 2 S.C.R. 802 at p. 808, 62 D.L.R. (3d) 1) (emphasis in Schwartz).

(Other emphasis added)

- [29] Here, the prosecution adduced no evidence of a 16-hour period during which the appellant was in police custody. I do not see how the trial judge could "understand the circumstances surrounding the confession" without coming to grips with the impact of that gap in the evidence. As I have said, relying solely upon the fact that the appellant consulted counsel could not be a complete answer.
- [30] The respondent's submission fails because there is simply no proof of one of the underlying assumptions. Mr. McInnes relies upon the fact that the appellant maintained his innocence as proof that he could not have been induced to falsely confess. However, the appellant admitted to a myriad of facts upon which the prosecution relied as proof of guilt. Those admissions may or may not be true. Only by assuming that those facts are true can Mr. McInnes's submissions stand. But, that assumption would undermine the presumption of innocence.
- [53] In this case, the accused was in police custody for approximately three hours, from 11:23 am until he was released after his statement.
- [54] Though not as extensive a gap as Holmes, it is a significant gap of 30 minutes in a time span of approximately three hours. During that gap, the evidence is silent about which, or how many, police officers dealt with the accused.
- [55] This severely compromises determining if "every legally significant witness" who had contact with Mr. Singh before his statement was called.

- [56] It can be inferred the accused remained in police custody, since he was arrested at 11:23 am and by some means ended up in police custody at the Gravelly Street police station at 12:05 pm.
- [57] However, on the evidence, it cannot be inferred that the accused was in the presence of Cst. Addison during those 30 minutes. She simply does not know. And, she has no recollection of even being at police station and turning over custody of the accused to Cst. De-Guzman.
- [58] Cst. Addison was candid, acknowledging that she has no recollection of transporting the accused in the patrol car in which she and Cst. Cavan arrived at the arrest location. She does not know if a police wagon transported the accused. If a police wagon was used to transport Mr. Singh, there is no evidence which officer or officers were operating it and thus would have had contact with the accused before the statement was taken. There is no evidence about what such officer or officers said or did in relation to Mr. Singh.
- [59] Mr. Singh was in VPD custody for its investigation of the offences upon which he was arrested at 11:23 am. In sum, the police evidence does not disclose:
1. How, in whose custody and in what vehicle Mr. Singh got from the arrest location to Gravelly Street police station.
 2. Whether Mr. Singh was transported directly or indirectly to Gravelly Street police station.
 3. Which police officer or officers dealt with Mr. Singh from 11:33 am until Cst. De-Guzman met him just over 30 minutes later at 12:05 pm in the lobby of the Gravelly Street police station.
- [60] Crown counsel concedes this gap in the evidence, fairly characterizing the transport of Mr. Singh as a "mystery".
- [61] Crown counsel notes the comments by Det. Cst. Doll at page 2 of the interview transcript, reproduced above, noting this may be an attempt at a secondary caution.
- [62] The general content of a secondary warning was helpfully summarized by Mr. Justice Barrow in *R. v. Kipling*, 2010 BCSC 1298, at para. 30:
- The secondary warning consists of advising the accused that if any police officer has promised an advantage or threatened a consequence should the accused speak or not speak to the police, then neither can have any effect on the accused's decision as to whether to speak. Those cautions both go to the very disqualifying feature of the first statement.
- [63] Madam Justice Lyster in *R. v. Willness*, 2023 BCSC 2209, at paras. 47 and 51 includes the form of secondary warning used in that case.
- [64] There was no "warning" in Det. Cst. Doll's questions of the accused. Even if those questions could impart some sort of caution or warning, Crown counsel fairly questions its efficacy given the accused's response, which includes that he just wants to shoot himself.

- [65] Further to the authorities noted above, all the surrounding circumstances must be considered.
- [66] Rosenberg, JA for the Court in Holmes rejected the suggestion that the appellant maintaining his innocence in that statement demonstrated he was not induced to falsely confess (para. 28), citing Oickle.
- [67] Here, in striving to understand the circumstances surrounding the statement, there is an unexplained gap in the police investigation. One inference is that nothing of consequence occurred. However, on the evidence, that is not the only inference. At least one other inference is that the accused was transported by at least one other police officer in a police wagon. As the Crown notes, what occurred in that 30 minute gap remains a "mystery".
- [68] Further, even if one could construe the words spoken by Det. Cst. Doll as some form of secondary caution, which I do not, I share Crown counsel's concerns about the efficacy of those words in the context.
- [69] On all of the evidence, I am not satisfied beyond a reasonable doubt that the statement by Mr. Singh to Det. Cst. Doll was voluntary. It is accordingly not admissible for any purpose, including for the cross-examination of Mr. Singh in the event he testifies.

"Doyle, J."

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