

CANADA / JUDGMENT

R. v. Stafford

2024 BCSC 2013

COURT

Supreme Court of British Columbia

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2024 BCSC 2013 R. v. Stafford

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Stafford,

2024 BCSC 2013

Date: 20241007

Docket: 35096

Registry: Fort St. John

Rex

v.

Michael Ricky Andrew Stafford

Before: The Honourable Justice Girn

Oral Ruling re: Application to Exclude Evidence Pursuant to s. 24(2) of the Charter

Counsel for the Defence:

N. Sahebi-Ghazvini

Counsel for the Crown:

G. Hutchings

Place and Date of Hearing:

Fort St. John, B.C.

September 9, 2024

Written submissions received from Crown and Defence:

July 12, 2024

Place and Date of Judgment:

Fort St. John, B.C.

October 7, 2024

Introduction

- [1] Mr. Stafford is charged with three counts of possession for the purpose of trafficking contrary to section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c.19 [CDSA], namely fentanyl, cocaine and MDMA.
- [2] Mr. Stafford brought forward a Charter application alleging infringement of his rights under the ss. 7, 8, 9 and 10(a) (b) of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 [Charter]. Mr. Stafford later abandoned the allegations relating to the infringement under s. 7.
- [3] Following four days of evidence on this voir dire, I found that Mr. Stafford's rights under s. 8 and s. 10 of the Charter had been infringed.
- [4] Counsel were then directed to provide written submissions on the appropriate remedy for the Charter breaches, specifically whether evidence obtained by the police should be excluded pursuant to s. 24(2) of the Charter. Counsel also provided oral submissions to supplement their written arguments.
- [5] The Crown takes the position that the evidence required to convict Mr. Stafford was not "obtained in a manner" that breached his Charter rights, and as a result a s. 24(2) analysis is not engaged. The Crown argues that there is no impugned evidence to exclude, as all relevant evidence was obtained lawfully, prior to and in a separate transaction from the Charter breaches.
- [6] However, the Crown says in the event that Mr. Stafford meets the threshold stage, the evidence should nonetheless be admitted when the Grant analysis, as articulated in *R. v. Grant*, 2009 SCC 32, is conducted.
- [7] Mr. Stafford argues that there exists sufficient temporal and contextual connection to meet the threshold analysis. He further argues that when the Grant analysis is conducted, the only possible conclusion the Court can arrive at is that the evidence must be excluded in order to maintain the integrity of the administration of justice.

Background

- [8] The background facts are described in some detail in my Reasons indexed at *R. v. Stafford*, 2024 BCSC 1172.

[9] In summary, the police conducted a motor vehicle stop of the vehicle driven by Mr. Stafford. They subsequently learned the vehicle did not have insurance and Mr. Stafford was a prohibited driver. As the vehicle was going to be impounded and given that Mr. Stafford was observed shifting in his seat prior to the officers approaching the vehicle, the vehicle was searched for safety reasons. Two small baggies of cocaine were located in the area where Mr. Stafford had earlier been observed making a stuffing motion. Mr. Stafford was arrested for possession of a controlled substance. A further search of the vehicle incidental to arrest produced additional controlled substances inside a book type safe under the driver's seat. In total 5 pills of fentanyl and carfentanil, 20.7 grams of MDMA, 3.7 grams of crack cocaine, empty baggies, a plastic container labeled "Coke" with 1.2 grams powder cocaine, and 18.8 grams of benzocaine and a scale were located inside the safe. Mr. Stafford also had \$1,340 inside his wallet, which was located on him when he was searched at the police detachment.

Charter Violations

[10] In my ruling referenced above, I made the following findings:

- Given the movements of Mr. Stafford when the vehicle was pulled over, the officers were justified to search the driver's area for safety reasons because the vehicle was going to be impounded. As such, the search of the vehicle was lawful and the drugs found in the vehicle which led to Mr. Stafford's arrest for possession of a controlled substances makes his arrest lawful and the subsequent arrest for possession for the purpose of trafficking was also lawful.
- Regarding the strip search, there was only a mere possibility or suspicion that Mr. Stafford was concealing "something" but that Cpl. Shillito did not know exactly what that could be. As such, Cpl. Shillito did not have the requisite reasonable and probable grounds to conduct the strip search and therefore Mr. Stafford's s. 8 Charter rights were infringed.
- Regarding Mr. Stafford's right to counsel, the delay in providing s. 10 Charter rights after his initial arrest for possession of a controlled substance was not unreasonable. However, the delay of almost two hours in arresting Mr. Stafford for possession for the purpose of trafficking and providing his s. 10 Charter rights after further drugs were located in the vehicle was unreasonable. The officers made the decision to prioritize other tasks over advising Mr. Stafford that his jeopardy had changed and facilitating his Charter rights including access to counsel at the earliest opportunity and without delay. Therefore Mr. Stafford's s. 10 Charter rights were infringed.

Legal Framework

[11] Section 24 of the Charter provides as follows:

Enforcement of guaranteed rights and freedoms

24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

- (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.
- [12] In *Grant*, the Supreme Court of Canada discussed the societal objectives of the s. 24(2) inquiry into whether evidence must be excluded to protect the reputation of the justice system:
- [68] The phrase "bring the administration of justice into disrepute" must be understood in the long-term sense of maintaining the integrity of, and public confidence in, the justice system. Exclusion of evidence resulting in an acquittal may provoke immediate criticism. But s. 24(2) does not focus on immediate reaction to the individual case. Rather, it looks to whether the overall repute of the justice system, viewed in the long term, will be adversely affected by admission of the evidence. The inquiry is objective. It asks whether a reasonable person, informed of all relevant circumstances and the values underlying the Charter, would conclude that the admission of the evidence would bring the administration of justice into disrepute.
- [69] Section 24(2)'s focus is not only long-term, but prospective. The fact of the Charter breach means damage has already been done to the administration of justice. Section 24(2) starts from that proposition and seeks to ensure that evidence obtained through that breach does not do further damage to the repute of the justice system.
- [70] Finally, s. 24(2)'s focus is societal. Section 24(2) is not aimed at punishing the police or providing compensation to the accused, but rather at systemic concerns. The s. 24(2) focus is on the broad impact of admission of the evidence on the long-term repute of the justice system.
- [13] Section 24(2) does not automatically exclude evidence obtained in breach of a Charter right. The accused bears the onus of establishing that, having regard to all the circumstances, the admission of the evidence would bring the administration of justice into disrepute: *R. v. Tim*, 2022 SCC 12 at para. 75.

Section 24(2) Inquiry

- [14] The court must undertake a two stage analysis under s. 24(2): the threshold and evaluative components. The threshold analysis requires the Court to determine whether there is a sufficient nexus between Charter breach and the evidence sought to be excluded, such that it was "obtained in a manner" that breached the Charter.
- [15] If the threshold is satisfied, the second stage involves an evaluative inquiry using the framework set out in Grant.

The Threshold Stage

- [16] In Tim at para. 78, the Supreme Court of Canada provides guidance on the threshold assessment of whether evidence was obtained in a manner that breached the accused's Charter rights:
1. The courts take "a purposive and generous approach" to whether evidence was "obtained in a manner" that breached an accused's Charter rights (R. v. Wittwer, 2008 SCC 33, [2008] 2 S.C.R. 235, at para. 21; R. v. Mack, 2014 SCC 58, [2014] 3 S.C.R. 3, at para. 38).
 2. The "entire chain of events" involving the Charter breach and the impugned evidence should be examined (R. v. Strachan, [1988] 2 S.C.R. 980, at pp. 1005-6).
 3. "Evidence will be tainted if the breach and the discovery of the impugned evidence are part of the same transaction or course of conduct" (Mack, at para. 38; see also Wittwer, at para. 21).
 4. The connection between the Charter breach and the impugned evidence can be "temporal, contextual, causal or a combination of the three" (Wittwer, at para. 21, quoting R. v. Plaha (2004), 189 O.A.C. 376, at para. 45). A causal connection is not required (Wittwer, at para. 21; R. v. Mian, 2014 SCC 54, [2014] 2 S.C.R. 689, at para. 83; Strachan, at pp. 1000-1002).
 5. A remote or tenuous connection between the Charter breach and the impugned evidence will not suffice to trigger s. 24(2) (Mack, at para. 38; Wittwer, at para. 21; R. v. Goldhart, [1996] 2 S.C.R. 463, at para. 40; Strachan, at pp. 1005-6). Such situations should be dealt with on a case by case basis. There is "no hard and fast rule for determining when evidence obtained following the infringement of a Charter right becomes too remote" (Strachan, at p. 1006).
- [17] A casual connection exists when the breach leads to the discovery of the evidence. A contextual connection exists when the breach and the discovery of the evidence are part of the same transaction. A temporal connection exists when the evidence is discovered very close in time to the Charter breaches: Tim at para. 79.

- [18] Contextual and temporal links are often considered in tandem, as intervening transactions that distance the context between obtaining evidence and subsequent Charter breaches also tend to increase their separation in time. In either case, s. 24(2) will not be triggered if the connection is tenuous or remote.
- [19] A s. 10(b) breach that is on its own likely too "remote and tenuous" to engage s. 24(2) may nonetheless help to satisfy the threshold where the breach "occurred in the context of one single transaction" involving several other Charter breaches, and which resulted in the discovery of evidence: *R. v. Bottomley*, 2023 BCSC 603 at para. 23. However, prior lawful seizure and subsequent failure to respect the accused's s. 10(b) rights do not form part of the same transaction: *Bottomley* at paras. 20-21. See also *R. v. Do*, 2019 ONCA 482 at paras. 2 and 9-11.
- [20] The timing of events is critical to the assessment of whether there is a causal, temporal or contextual connection to the breaches and the discovery of the evidence.
- [21] As such, I have reproduced the timeline outlined in my earlier Reasons:
- [111] The following is a timeline I have compiled regarding the delay to Mr. Stafford's Charter rights under s. 10, based on the testimonies of Constable Alford and Corporal Shillito:
- a) 11:30 a.m.- Vehicle stop.
 - b) 11:47 a.m. - Mr. Stafford is arrested for driving while prohibited.
 - c) 11:47 a.m. - 11:50 a.m. - Constable Alford searches vehicle and locates baggies of cocaine and gold watch strips.
 - d) 11:50 a.m. - Constable Alford arrests Mr. Stafford for driving without insurance, driving while prohibited and possession of a controlled substance. He is chartered and warned.
 - e) 11:58 a.m. - Constable Alford commences photographing and searching the rest of the vehicle and locates further drugs.
 - f) 11:59 a.m. - Corporal Shillito departs scene with Mr. Stafford to detachment.
 - g) 12:03 p.m. - Corporal Shillito arrives at detachment with Mr. Stafford.
 - h) 12:07 p.m. - Mr. Stafford advises he wishes to speak to counsel of choice.
 - i) 12:09 p.m. - Mr. Stafford speaks with counsel of choice.
 - j) 12:14 p.m. - Constable Alford leaves scene to head back to the detachment.
 - k) 12:43 p.m. - Corporal Shillito conducts strip search of Mr. Stafford.
 - l) 1:03 p.m. - Constable Alford seizes cash and gold watch from Corporal Shillito. They make decision to arrest Mr. Stafford for possession for the purpose of trafficking.

- m) 1:56 p.m. - Corporal Shillito arrests Mr. Stafford for possession for the purpose of trafficking and provides Charter rights and access to counsel.
- [22] I will begin with whether there is a temporal, contextual or causal or a combination of the three between the obtaining of the evidence and the strip search.
- [23] Mr. Stafford was strip searched at 12:43 p.m. Cpl. Shillito's decision to strip search Mr. Stafford was a result of the initial search of the vehicle by Cst. Alford. It was during this first search that two baggies of cocaine were located in the center console. That initial search of the vehicle and seizure of drugs by Cst. Alford occurred sometime between 11:47 a.m. - 11:50 a.m.
- [24] The second search of the vehicle where Cst. Alford located additional drugs and paraphernalia occurred at 11:58 a.m. The strip search of Mr. Stafford occurred some 47 minutes later and lasted approximately five minutes. Cpl. Shillito did not become aware of the additional drug seizures until Cst. Alford spoke to him at around 1:03 pm. However, had Cst. Alford advised Cpl. Shillito as soon as he seized the additional drugs and other items from the vehicle sometime around 11:58 a.m., Mr. Stafford would still likely have been strip searched. The second search of the vehicle and subsequent seizure of the drugs and other items had already been completed by the time Mr. Stafford was strip searched.
- [25] In regards to the s. 10 Charter breach, Mr. Stafford was not re-arrested for possession for the purpose of trafficking and provided with access to counsel until 1:56 p.m. Once again the second seizure of drugs had already been completed by then. In fact, Cst. Alford had already logged the drugs and paraphernalia into the exhibits locker shortly after he arrived, which would have been sometime prior to 1:13 p.m. when he spoke to Corporal Shillito.
- [26] In my view, the facts in this case are closer in facts and in law to those considered in Do. In Do, the seizure of drugs under a valid search warrant was largely complete by the time the Charter breach occurred (s. 10 Charter breach):
- [9] The earlier seizure of the drugs and other items under a valid search warrant properly executed was a transaction largely completed at the time of the appellant's arrest, and was not precipitated by it, as in Pino. It was causally, temporally and contextually distinct and separate from the arrest, in the sense captured by Doherty J.A. in *R. v. Plaha* (2004), 188 C.C.C. (3d) 289 (Ont. C.A.), at para. 45:

The evidence will be "obtained in a manner" that infringed a Charter right if on a review of the entire course of events, the breach and the obtaining of the evidence can be said to be part of the same transaction or course of conduct. The connection between the breach and the obtaining of the evidence may be temporal, contextual, causal or a combination of the three. The connection must be more than tenuous: *R. v. Goldhart* (1996), 107 C.C.C. (3d) 481 (S.C.C.) at 492-97.

- [10] The facts in this case are quite unlike those in Pino, where Laskin J.A. noted, at para. 73:

Here, the two s. 10(b) breaches along with the s. 8 breach meet the "obtained in a manner" requirement. The marijuana seized from the trunk of Ms. Pino's car and all three Charter breaches are part of the same transaction. That transaction or the common link between the evidence and the breaches is Ms. Pino's arrest.

[11] Because the earlier seizure of the drugs and other items under a valid search warrant properly executed was a transaction largely completed at the time of the appellant's arrest, it was causally, temporally and contextually distinct and separate from the arrest. Any possible breach of s. 10(b) in the time following the appellant's arrest does not attach to that evidence.

[emphasis added]

[27] In my view, the second seizure of drugs and paraphernalia were causally, temporally and contextually distinct and separate from the s. 8 Charter breach of the strip search and the delay in the s. 10 Charter breach. I am unable to agree with Mr. Stafford that they were part of the same transaction or course of conduct. The connection to both the s. 10 and s. 8 are simply too remote and tenuous to trigger s. 24(2).

[28] I will nonetheless move to the evaluative stage in the event that I am wrong in my analysis at the threshold stage.

The Evaluative Stage

[29] Section 24(2) does not create an automatic exclusionary rule. The accused bears the onus of establishing that, having regard to all the circumstances, the admission of the evidence would bring the administration of justice into disrepute: Tim at para. 75.

[30] Even where the requisite nexus to engage s. 24(2) exists, the absence of a causal connection between the breach and discovery of evidence may militate against exclusion of evidence in the Grant analysis: Bottomley at para. 24.

[31] At the evaluative stage, the court must balance the effect of admitting the evidence with society's confidence in the justice system. In Grant, the Court set out three lines of inquiry to determine whether evidence should be excluded under s. 24(2). They are:

- (1) the seriousness of the Charter-infringing state conduct (admission may send the message the justice system condones serious state misconduct),
- (2) the impact of the breach on the Charter-protected interests of the accused (admission may send the message that individual rights count for little), and
- (3) society's interest in the adjudication of the case on its merits.

- [32] The balancing mandated by s. 24(2) is qualitative in nature and therefore not capable of mathematical precision: Grant at para. 140. As well, "it is not simply a questions of whether the majority of the relevant factors favour exclusion in a particular case": R. v. Harrison, 2009 SCC 34 at para. 36.
- [33] The three lines of inquiry are to be taken into consideration when assessing the effect of admission of the evidence on the reputé of the administration of justice. Considering all of the circumstances during these inquiries, the court must determine whether, on balance, the admission of the evidence obtained by Charter breach would bring the administration of justice into disrepute: Grant at para. 85

The seriousness of the Charter-infringing state conduct

- [34] At this stage of the inquiry, the court is not concerned with punishing the police or to deter Charter breaches but rather to preserve public confidence in the rule of law and its processes: Grant at para. 73.
- [35] In Grant, the majority held that Charter-infringing conduct by the state ranges in seriousness:
- [74] State conduct resulting in Charter violations varies in seriousness. At one end of the spectrum, admission of evidence obtained through inadvertent or minor violations of the Charter may minimally undermine public confidence in the rule of law. At the other end of the spectrum, admitting evidence obtained through a wilful or reckless disregard of Charter rights will inevitably have a negative effect on the public confidence in the rule of law, and risk bringing the administration of justice into disrepute.
- [36] The more serious or deliberate the breach, the greater need for the courts to dissociate themselves from that conduct by excluding evidence linked to that conduct. As well, good faith on the part of the police will reduce the need for the court to dissociate itself from the police conduct. However, ignorance of the Charter standards must not be rewarded or encourage and negligence or wilful blindness cannot be equated with good faith: Grant at para. 75
- [37] With respect to the strip search, the Crown submits that Cpl. Shillito did not take a cavalier approach, did not act improperly and developed what he honestly believed was sufficient grounds for the strip search for which he received authorization from his superior, Cpl. Mareski. The Crown also points to the fact that strip search was performed quickly, correctly and was as minimally invasive as possible.
- [38] In terms of the s. 10 Charter breach, the Crown submits that while there was significant delay, there is no evidence that Mr. Stafford would have been released any earlier had he received his s. 10 Charter rights in relation to the more serious charges or that a delay had any impact on how things unfolded. The Crown says the fact that the police made no attempts to elicit evidence Mr. Stafford is also a factor to be considered at this stage of the

inquiry. The Crown argues that a Charter right delayed is less serious than a Charter right abandoned.

- [39] Mr. Stafford argues that while the police conduct was not a deliberate attempt to infringe his rights and concedes that bad faith was not present, the breaches stem largely from a disregard for his rights and their duties and obligations as police officers. Mr. Stafford argues that Cst. Alford was aware of his duties but failed to act on them and attempted to deny or minimize any oversight on his part. Mr. Stafford also submits that the police were negligent in meeting Charter standards. Finally, the fact that there were multiple breaches is a factor the court must consider at this stage.
- [40] With respect to the strip search, there can be no dispute that a strip search is highly invasive and the police require reasonable and probable grounds over and above the grounds for an arrest. I found that Cpl. Shillito did not have such grounds.
- [41] However, I would not go as far to say that there was a deliberate attempt to breach Mr. Stafford's rights. Nor am I able to conclude that the police acted in bad faith or that there was a cavalier attitude on the part of Cpl. Shillito. This is evidenced in the fact that it was the first time Cpl. Shillito had conducted a strip search in the several years that he had been a police officer.
- [42] Nonetheless, while I accept that in these circumstances the strip search is not at the far end of the seriousness spectrum, an unjustified strip search is a serious breach of Mr. Stafford's s. 8 rights.
- [43] With respect to delay by the police in providing Mr. Stafford his s. 10 Charter rights after the second search which yielded the seizure of additional drugs, I accept that the police did not deliberately delay in advising Mr. Stafford of his change in jeopardy and providing access to counsel without delay. Nor can I find that there was bad faith exercised on the part of Cst. Alford and Cpl. Shillito. There was also no evidence that this conduct was a systemic failure in the Fort St. John RCMP detachment with respect to s. 10 rights. There was also no incriminating evidence obtained as a result of the delay.
- [44] While the delay was just approximately 2 hour delay, which I found to be unreasonable, this is not one of those instances where the accused languished in custody without access to counsel. Such was the case in *R. v. Lerch*, 2020 BCSC 441 where a delay of 22 hours without any justified explanation was found to be unreasonable and Justice Skolrood (as he then was) found the delay to be extensive and that it fell towards the more serious end of the spectrum: See also *R. v. Wong and Truong*, 2017 BCSC 1643 (6 hour delay).
- [45] The comments in *R. v. Rover*, 2018 ONCA 745, the Court at para. 45 highlight the importance of right to counsel:

The right to counsel is a lifeline for detained persons. Through that lifeline, detained persons obtain, not only legal advice and guidance about the procedures to which they will be subjected, but also the sense that they are not entirely at the mercy of the police while detained. The psychological value of access to counsel without delay should not be underestimated.

- [46] As I noted in my Reasons, the police made the decision to prioritize other tasks over advising Mr. Stafford that his jeopardy had changed and facilitating his Charter rights including access to counsel at the earliest opportunity without delay. I also found that there was no reason why this could not have happened as soon as Cst. Alford located the additional drugs or even after he arrived at the detachment.
- [47] The fact that Mr. Stafford had already been given access to counsel when he first arrived at the police detachment is also a relevant factor at this stage of the analysis. In this regard, I cannot conclude that the seriousness of the breach falls on the more serious end of the spectrum. I would say it is more at the lower end.
- [48] Overall, while I find that there was not a pattern of abuse, the fact that there were two breaches, leads me to conclude that the Charter-infringing state conduct falls somewhere at the moderate to serious end of the spectrum, inclining towards the exclusion of evidence.

The impact of the breach on the Charter-protected interests of the accused

- [49] Moving onto the impact of the breach on the Charter-protected interests of the accused. In this prong of the inquiry, the court must focus on the seriousness of the impact of the Charter breach on the Charter protected interests of the accused and calls for an evaluation of the extent to which the breach actually undermined the interests protected by the right infringed.
- [50] The impact may range from fleeting and technical to profoundly intrusive: Grant at para. 76. In Grant, the court noted that the more serious the incursion on those interests, the greater the risk that admission of the evidence would bring the administration of justice into disrepute.
- [51] The second inquiry is practical, not hypothetical. In R. v. Berry, 2022 BCCA 389 at para. 244, our Court of Appeal emphasized that "[i]t is the actual impact that is at issue" [emphasis in original].
- [52] In regards to the strip search, there is no doubt that a strip search is highly intrusive. The comments in R. v. Golden, 2001 SCC 83 are instructive at para. 96:

a "routine" strip search carried out in good faith and without violence will also violate s. 8 where there is no compelling reason for performing a strip search in the circumstances of the arrest.

- [53] Mr. Stafford did not adduce any evidence on the voir dire regarding his subjective experience during the strip search. The search lasted approximately 5 minutes and proper protocols were followed. However, I accept that any strip search is humiliating and degrading to some extent.
- [54] Finally, as I have pointed out earlier, there is also no causal connection between the strip search and the discovery of the evidence from either the first or second vehicle search, which were both completed by the time Mr. Stafford was strip searched.
- [55] In terms of the impact of the breach of the s. 10 Charter right, I find that there is no actual impact on Mr. Stafford. This is not the situation where the police delay resulted in the delayed opportunity for Mr. Stafford to avail himself of the "lifeline" presented by the s. 10 given that Mr. Stafford already had a previous opportunity to speak to counsel just hours before his jeopardy changed. That, in my view, suggests that the delay in the informational and implementational components of s. 10 could not have inflicted the same type of psychological pressure and distress on Mr. Stafford that the Court in *Rover* speaks of.
- [56] As well, it is important to remember that the purpose of this Charter right is to assist detainees with regaining their liberty and protecting them against the risk of involuntary self-incrimination: see *R. v. Suberu*, 2009 SCC 33 at para. 40; *R. v. Bartle*, [1994] 3 S.C.R. 173 at p. 191; and *R. v. Brydges*, [1990] 1 S.C.R. 190, at pp. 202-3. At no point did Mr. Stafford incriminate himself and there is no indication that his liberty would have been obtained any earlier had the breach not occurred. In fact, the police held off questioning him until after he was advised of his change in jeopardy and had an opportunity once again to consult with counsel.
- [57] Also, there is no causal connection between the s. 10 Charter breach and the discovery of the drugs and paraphernalia after the second vehicle search. Rather, they were seized much earlier before the s. 10 Charter breach occurred and were in fact discovered without the breach.
- [58] Even if Mr. Stafford had been provided his s. 10 Charter rights immediately after the additional drugs were located in the vehicle, it would have had no outcome in the seizure of this evidence.
- [59] This in my view, lessened the impact of the breach on Mr. Stafford's Charter-protected interests, making "admission more likely": see *Grant*, at paras. 122-25.
- [60] Overall, looking at the cumulative impact of the strip search and delay in s. 10 rights, I conclude that the actual impact of the breaches on Mr. Stafford's Charter-protected interests was on the lower to moderate end of the spectrum, leaning towards exclusion.

Society's interest in the adjudication of the case on its merits

- [61] The third part of the inquiry concerns society's interest in an adjudication on the merits. In *Grant* at para. 79, the Court noted:

Society generally expects that a criminal allegation will be adjudicated on its merits. Accordingly, the third line of inquiry relevant to the s. 24(2) analysis asks whether the truth-seeking function of the criminal trial process would be better served by admission of the evidence, or by its exclusion. This inquiry reflects society's "collective interest in ensuring that those who transgress the law are brought to trial and dealt with according to the law": *R. v. Askov*, [1990] 2 S.C.R. 1199 at pp. 1219-20. Thus the Court suggested in *Collins* that a judge on a s. 24(2) application should consider not only the negative impact of admission of the evidence on the repute of the administration of justice, but the impact of failing to admit the evidence.

[Emphasis in original.]

[62] The court also noted that the seriousness of the alleged offence may cut both ways:

[84] Failure to effectively prosecute a serious charge due to excluded evidence may have an immediate impact on how people view the justice system. Yet, as discussed, it is the long-term repute of the justice system that is s. 24(2)'s focus. As pointed out in *Burlingham*, the goals furthered by s. 24(2) "operate independently of the type of crime for which the individual stands accused" (para. 51). And as Lamer J. observed in *Collins*, "[t]he Charter is designed to protect the accused from the majority, so the enforcement of the Charter must not be left to that majority" (p. 282). The short-term public clamour for a conviction in a particular case must not deafen the s. 24(2) judge to the longer-term repute of the administration of justice. Moreover, while the public has a heightened interest in seeing a determination on the merits where the offence charged is serious, it also has a vital interest in having a justice system that is above reproach, particularly where the penal stakes for the accused are high.

[63] The charges Mr. Stafford faces are serious and the devastating impact of hard drugs cannot be understated. Hard drugs such as cocaine, MDMA and fentanyl have had and continue to not only affect larger urban areas but also smaller communities like Fort St. John.

[64] In this regard, the comments of Moldaver J in *R. v. Parranto*, 2021 SCC 46 are instructive:

[87] The dangers posed by trafficking in hard drugs, such as heroin and cocaine, have long been recognized in Canada. Over the past few decades, however, society's awareness of the true gravity of trafficking in such drugs has grown to the point that we are reminded, on a daily basis, of the death, destruction, and havoc it causes in communities across Canada.

[88] Trafficking in such substances causes both direct and indirect harms to society. Directly, the distribution and abuse of hard drugs leads to addiction, debilitating adverse health effects, and, all too frequently, death by overdose. As Lamer J. (as he then was) astutely observed, where addiction and death occur -- as they so often do -- those who oversee the distribution of these drugs are personally "responsible for the gradual but inexorable degeneration of many of their fellow human beings" (*R. v. Smith*, [1987] 1 S.C.R. 1045, at p. 1053).

[89] Trafficking also leads indirectly to a host of other ills, including an increase in all manner of crime, committed by those seeking to finance their addiction, as well as by organized crime syndicates . Given that much of this criminal activity is violent, trafficking has come to be understood as an offence of violence, even beyond the ruinous consequences it has for those who abuse drugs and in the process, destroy themselves and others. Indeed, as Doherty J.A. has explained, violence is such a predictable consequence of the illicit drug trade that it cannot be dissociated from it:

Cocaine sale and use is closely and strongly associated with violent crime. Cocaine importation begets a multiplicity of violent acts. Viewed in isolation from the conduct which inevitably follows the importation of cocaine, the act itself is not a violent one in the strict sense. It cannot, however, be disassociated from its inevitable consequences .

[90] A further and perhaps even more devastating consequence of the hard drug trade is its impact on families and the intergenerational trauma it causes:

Trafficking in drugs, and in particular hard drugs such as cocaine, is a crime whose victims can be found far beyond the individuals who become addicted to the drugs. Families can be torn apart by either the loss of the individual to the addiction itself or to the violence that all too often accompanies the drug trade. . . .

Children suffer immense harm from the effects of addiction in their home, whether this addiction be from pre-natal impact or from physical and/or emotional violence in the homes that they should be safe in. The future of these children and their families is damaged and all of society pays the price.

(R. v. Profeit, 2009 YKTC 39, at paras. 25-26 (CanLII))

See also M. Barnard, *Drug Addiction and Families* (2007), at pp. 14-17, explaining that children whose parents abuse drugs are at an increased risk of physical abuse, emotional abuse, and neglect.

[91] Finally, the trafficking of hard drugs leads to "significant if not staggering" costs to society in terms of health care and law enforcement expenses, as well as lost productivity (Pushpanathan, at para. 89; see also R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130, at para. 82). In 2017, for example, it is estimated that abuse of opioids and cocaine in Canada resulted in total costs of \$9.6 billion (Canadian Substance Use Costs and Harms Scientific Working Group, *Canadian Substance Use Costs and Harms (2015-2017)* (2020), at p. 1).

[92] Trafficking in hard drugs is thus a "crime with such grievous consequences that it tears at the very fabric of society" (Pushpanathan, at para. 79). Significant penitentiary sentences are regularly imposed for individuals who traffic in large quantities of such drugs, which, as we shall see, are far less deadly than fentanyl (see, e.g., R. v. Bains, 2015 ONCA 677, 127 O.R. (3d) 545 (9 years for possession of one kilogram of heroin for the purpose of trafficking); R. v. Athwal, 2017 ONCA 222 (12 years for conspiracy to possess heroin for the purpose of trafficking); R. v. Chukwu, 2016 SKCA 6, 472 Sask. R. 241 (10 years for the possession of 0.59

kilograms of heroin for the purpose of trafficking); R. v. Dritsas, 2015 MBCA 19, 315 Man. R. (2d) 205 (9 years for possession of cocaine for the purposes of trafficking for a "high-level cocaine trafficker involved in kilo-level deals" (para. 9)).

- [65] Finally, in Tim, the Court noted the prospect of excluding fentanyl evidence weighed heavily towards admission:
- [99] I have concluded that the first line of inquiry under Grant pulls weakly toward exclusion and the second does so moderately, but the third pulls strongly toward admission. In my view, on these facts, the final balancing does not call for exclusion of the evidence to protect the long-term reputé of the justice system. A relatively inexperienced police officer made an honest mistake about the legal status of gabapentin, a prescription drug that is traded on the street and that the appellant tried to hide during a lawful traffic collision investigation. That led to an arrest and searches incident to arrest, and to the discovery of a loaded gun, ammunition, and fentanyl -- a drug that has been described as "public enemy number one" (R. v. Parranto, 2021 SCC 46 at para. 93, per Moldaver J.). Excluding this evidence would simply punish the police -- which is not the purpose of s. 24(2) -- and would damage, rather than vindicate, the long-term reputé of the criminal justice system.
- [66] In my view, the safety of the community hangs in the balance. Like in Harrison, at para. 34, the third line of inquiry favours admission in this case because, without that admission, there would be no case to be adjudicated.
- [67] Society's interests in an adjudication on the merits strongly favors admission of the evidence.

Balancing

- [68] As I have noted earlier, the accused continues to hold the onus of establishing why real evidence should be excluded.
- [69] It must be remembered that the s. 24(2) analysis does not look at the breaches in isolation, but collectively and cumulatively: Beaver at para 134.
- [70] In the circumstances here, I find that the third factor does tip the scale in favour of admission. The first two factors are simply not, in my view, sufficiently strong to overcome the compelling interest that society has in the adjudication of this case on its merits. In my view, the reputation of the administration of justice would be significantly harmed by the exclusion of real evidence which includes cocaine and MDMA and fentanyl that has been referred to as "public enemy one", discovery of which was not causally connected to the two Charter breaches. I conclude that the exclusion of the evidence, rather than its inclusion would be harmful to the long term reputation of the administration of justice.

Conclusion

[71] Mr. Stafford's application pursuant to s. 24(2) of the Charter for exclusion of the evidence is dismissed.

[72] I thank counsel for their very thorough and helpful submissions. Those are my reasons.

"Girn J."

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