SUPREME COURT OF YUKON

Citation: *R v McLaughlin*, 2022 YKSC 18

Date: 20220422
S.C. No. 20-01512
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

APPLICANT

AND

STEVEN ALEXANDER MCLAUGHLIN

RESPONDENT

Publication of evidence taken at the preliminary inquiry is prohibited by court order pursuant to s. 539(1) of the *Criminal Code*. **This publication ban is no longer in effect.**

Pursuant to s. 648(1) of the *Criminal Code* no information regarding this portion of the trial shall be published before the jury retires to consider its verdict. **This publication ban has lapsed.**

Before Chief Justice S.M. Duncan

Counsel for the Applicant — Lauren Whyte

Steven Alexander McLaughlin — Appearing on his own behalf

REASONS FOR DECISION

Introduction

[1] This is an application by the Crown for a ruling on the voluntariness of two statements given by the respondent to police. Its determination involves the balancing

of the rights of an accused person with society's interest in the investigation and resolution of criminal offences (*R v Singh*, 2007 SCC 48 ("*Singh*") at para. 1).

[2] The respondent, Steven McLaughlin, is charged with aggravated assault, uttering a threat to cause death, assault, and unlawful confinement. He was arrested in Whitehorse on August 29, 2019. He is currently on release from custody. His trial is scheduled to commence on May 9, 2022, by judge and jury, in Watson Lake.

[3] The applicant Crown seeks a ruling on the admissibility of two custodial interrogation statements provided by the respondent to police on August 30, 2019, and November 8, 2019, for the purpose of cross-examination at trial. The issue is whether the statements were voluntary based on the test at common law.

[4] The respondent, who is representing himself, submitted he does not dispute the statements' voluntariness. However, he stated he was opposed to the way in which the police treated him during the taking of the statements. He argued he was not taken seriously or offered medical attention when he said more than once he felt sick, and that questioning continued without the police ever telling him he could stop at any time if he needed to speak to a lawyer or did not feel well. He further stated in oral submissions at the hearing that the police "kept pushing" after he said "I need my lawyer here". Given these submissions, a full analysis of the test of voluntariness is necessary, despite the respondent's stated concession.

Background

[5] I will provide an overview of the facts. Reference to details related to the statements is made in the analysis portion of these reasons.

[6] The alleged incident resulting in the charges occurred on a property at Winded Lake, located approximately 15-20km outside of Watson Lake, where the respondent was staying in a travel trailer. Two women, Jessica Aranda and Mikaela Cachene, the girlfriend of the respondent at the time, drove to Winded Lake around 10:00 p.m. on August 28, 2019. Upon their arrival, Steven McLaughlin approached the car, carrying a gun. He smashed the back window of the car and struck Mikaela Cachene in the back of the head with the butt of the gun after pulling her from the car. He pointed the gun at Jessica Aranda, threatened her life and would not let her leave the property. Mikaela Cachene was bleeding and fading in and out of consciousness. After several hours, the respondent persuaded a neighbour to drive them to the hospital in Watson Lake, dropping Jessica Aranda off at the place she was staying on the way. The next morning, Mikaela Cachene was medivaced to Whitehorse General Hospital ("WGH"), accompanied by the respondent.

[7] Corporal Timothy Anderson in Whitehorse received information from the Watson Lake detachment the morning of August 29, 2019, that the respondent was arrestable. He asked two officers to attend at the WGH to locate and arrest him. Two uniformed police officers, Constable Charles Conway and Constable Alice Cote, went to WGH at approximately 12:00 p.m. They identified the respondent as he left the Emergency Room and advised him he was under arrest for assault with a weapon. The respondent was cooperative, sober and went to the police vehicle without incident after being handcuffed for officer safety. The police read him his *Charter* rights from the card[1]

[1] **Charter of Rights – Counsel**
I am arresting/detaining you for _____. You have the right to retain and instruct a lawyer without delay. You may call any lawyer you wish. A Legal Aid lawyer is also available 24 hours a day to give you

provided to police officers at approximately 12:17 p.m. The respondent replied that he understood. They drove him to the arrest processing unit ("APU") at the Whitehorse Correctional Centre ("WCC") in an unmarked police vehicle.

[8] There the police offered to facilitate a call to a lawyer. He provided the name of a lawyer at Yukon Legal Services Society ("YLSS") and the police made two unsuccessful attempts to call her. The respondent then said he did not need to speak to a lawyer at that time. Constable Cote reminded him he had a right to speak to a lawyer right away and offered to arrange for him to speak to another one. The respondent declined, saying he could speak to a lawyer later. The two officers then left the respondent at the APU.

[9] Corporal Anderson was advised by staff at the APU after 5:00 p.m. on August 29, 2019, that the respondent had asked to speak to a lawyer as he had not yet done so. Corporal Anderson attended at the APU in full police uniform and met with the respondent. He advised him of his charges, read him his *Charter* rights verbatim from the prepared card, including his right to speak to a lawyer of his choice. The respondent replied he understood all of this. Corporal Anderson obtained the number of the lawyer provided by the respondent, called the number for the respondent, and then left him to speak with the lawyer in private. The officer's notes showed the respondent spoke with

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free legal advice. I can provide you with a private phone and the phone numbers for Legal Aid or any other lawyer of your choice. If you are later charged with an offence you may also apply to Legal Aid for assistance.

Do you understand? Do you want to call a lawyer? *(if yes)* Who do you want to call?
…

Police Warning You do not have to say anything. Whether you choose to say anything or not, you have nothing to hope from any promise and nothing to fear from any threat. Anything you say may be used as evidence. Do you understand?

the lawyer for nine minutes from 5:49 p.m. to 5:58 p.m. At the end of the call, Corporal Anderson asked him the standard questions of whether he spoke to a lawyer and understood the advice given. The respondent nodded yes to both questions. He was then placed in a cell in police custody.

[10] The next day, August 30, 2019, Corporal Les Donison, a member of the Major Crimes Unit in Whitehorse at the time, attended at the APU at the request of his supervisor to conduct a warned custodial interview with the respondent. He began the interview at 9:23 a.m. and ended it at approximately 12:00 p.m. Relevant details of the interview will be addressed in the analysis below.

[11] On November 8, 2019, at approximately 12:50 p.m., the respondent turned himself in at the front desk of the RCMP detachment in Whitehorse. Corporal Kelly Manweiler, as Acting Watch Commander that day, was assisting at the front desk when the respondent arrived. There were warrants outstanding for his arrest because he had breached his release conditions. Corporal Manweiler arrested him, told him why he was under arrest, and read him his *Charter* rights and police caution from the card (see footnote #1). She asked if he understood his rights and he answered yes. She asked if he wished to contact a lawyer and he said no. She asked if he understood the police warning and he said yes. Corporal Manweiler observed he was sober and not under the influence of any substances. She escorted him through the detachment to a police vehicle and transported him to the APU at WCC. They arrived there at approximately 1:05 p.m.

[12] At the APU, Corporal Manweiler asked the respondent again whether he wanted her to contact a lawyer for him and he declined. Corporal Manweiler left shortly after this.

[13] Corporal Manweiler re-attended at the APU at approximately 2:18 p.m. to serve the respondent with a notice of intent. At that time, the respondent requested to call his girlfriend and Corporal Manweiler facilitated this unusual request because he was polite, cooperative, and turned himself in. There was no further discussion at that time about him talking to a lawyer.

[14] Constable Colin Kemp saw Corporal Manweiler interacting with the respondent at the detachment's front desk just before 1:00 p.m. He assisted her with transporting the respondent to the APU and then interviewed him at the APU. Details of that interview, to the extent necessary given the statement is not being challenged, are set out below.

[15] During the *voir dire*, the arresting officers and the interviewing officers testified. The respondent also testified. The video recordings of both statements were played in court in their entirety.

Issues

[16] Were the statements provided voluntarily by the respondent to police on August 30, 2019, and November 8, 2019? Specifically, were there any threats or promises made, was there an atmosphere of oppression, and did the respondent have an operating mind? Was his right to counsel respected at all times?

Legal Principles

[17] The common law places the onus on the Crown to prove voluntariness beyond a reasonable doubt. Exclusion of the statement at trial is automatic if the test is not met (*Singh* at para. 25).

[18] The purpose of the test of voluntariness of statements is twofold. The rights of the accused are to be protected at the same time as society's need to investigate and solve crimes is not unduly limited. These two objectives were described by the court in *R v Precourt* (1976), 18 OR (2d) 714 (CA) at 721 and adopted by the court in *Oickle,* [2000] SCC 38 ("*Oickle*") at para. 33:

> Although improper police questioning may in some circumstances infringe the governing [confessions] rule it is essential to bear in mind that the police are unable to investigate crime without putting questions to persons, whether or not such persons are suspected of having committed the crime being investigated. Properly conducted police questioning is a legitimate and effective aid to criminal investigation. …
>
> On the other hand, statements made as the result of intimidating questions, or questioning which is oppressive and calculated to overcome the freedom of will of the suspect for the purpose of extracting a confession are inadmissible. … [citations omitted]

[19] Judgments have described the importance of deciding voluntariness in context. All relevant factors and the entire circumstances must be considered in deciding whether a reasonable doubt has been raised. Appropriate emphasis is to be accorded to the factors depending on the context.

[20] The Supreme Court of Canada in *Oickle* set out four factors that must be considered by a court in determining voluntariness:

a. Threats or promises: Did the police make threats or promises that raise a fear of prejudice or hope of advantage? For example, were there words used that implied negative consequences from a refusal to talk? This is distinguished from encouragements to tell the truth or suggestions that the person will “feel better” if they tell the truth or confess. An offer of a reduced charge, lenient treatment, or psychiatric assistance if the accused confesses or talks is considered to be a promise of an advantage. It is in the control of the police officer, unlike a moral or spiritual inducement where the police officer has no control over the benefit. As noted by the court in *Oickle*, the most important consideration in all cases is to look for a *quid pro quo* offer by interrogators, whether it comes in the form of a threat or a promise.

b. Oppression: If police create unbearable conditions, then an accused may make untrue statements in order to escape the situation. Examples are deprivation of food, water, clothing, heat, sleep, or medical attention. Excessively aggressive and intimidating questioning over a prolonged period can also be a source of oppression. Finally, the use of non-existent evidence by police can be a source of oppression in certain contexts, especially when combined with other factors.

c. Operating Mind: This is not a discrete inquiry but instead a consideration of whether the accused understood what he was saying and that it could be used by police to his detriment.

d. Police trickery: This is a distinct inquiry from the previous three factors as its objective is maintaining the integrity of the criminal justice system. This factor concerns itself with the conduct of the police that is serious enough to "shock the community." Examples of such conduct include "a police officer pretending to be a chaplain or legal aid lawyer; or one who injects truth serum into a diabetic under the pretense that it was insulin" (*Oickle* at para. 66).

[21] The court in *Oickle* summarized the test at paras. 68-69:

> … [B]ecause of the criminal justice system's overriding concern not to convict the innocent, a confession will not be admissible if it is made under circumstances that raise a reasonable doubt as to voluntariness. … If the police interrogators subject the suspect to utterly intolerable conditions, or if they offer inducements strong enough to produce an unreliable confession, the trial judge should exclude it. Between these two extremes, oppressive conditions and inducements can operate together to exclude confessions. Trial judges must be alert to the entire circumstances surrounding a confession in making this decision.
>
> … Whether the concern is threats or promises, the lack of an operating mind, or police trickery that unfairly denies the accused's right to silence, this Court's jurisprudence has consistently protected the accused from having involuntary confessions introduced into evidence. If a confession is involuntary for any of these reasons, it is inadmissible.

[22] The voluntariness consideration is concerned with ensuring a confession or statement is reliable: oppression and inducements are not conducive to reliability. Voluntariness is also concerned with protecting rights of the accused and ensuring fairness in the criminal justice process, shown by the doctrine of the operating mind and the consideration of police trickery.

Analysis

Statement #1 – August 30, 2019

[23] The respondent raised two concerns about this statement during the *voir dire.* First, he said his multiple complaints of feeling sick to his stomach, including going to the bathroom twice during the two-and-a-half-hour interview were not taken seriously. He was not asked if he needed medical attention. Second, he said Corporal Donison continued to question him persistently after he said he would not answer certain questions without his lawyer.

[24] I will address these specific concerns. Both are considerations under the oppression factor. I will also address other aspects of the statement related to its voluntariness: the existence of inducements, and whether there was a need for further legal consultation because of a possible change in jeopardy.

[25] The respondent referred to feeling sick to his stomach six times throughout the two-and-a-half-hour interview. Each time he referred to it in the context of not "feeling good" about the incident that led to his arrest, or when he thought about his daughter. The following provides the six references:

> #1 – A: … you know when you see somebody like that it's not like I just used the bathroom 'cause I'm sick to my stomach so obviously this hurts me I got feelin's and that (p 46);
>
> #2 – A: So talking about my kid triggers some things in me, makes me sick to my stomach, do I go through this again? ... (p 50);
>
> #3 – Q: That you went to the hospital with Mikaela
> A: To-t take proper care for her
> Q: Out of out of out of concern for her?
> A: Well yeah and I stayed there

Q: Mhm
A: Seven shittiest hours of my life to watch somebody fucked up like that.
Q: No I
A: It's not easy, I'm sick to my stomach
Q: I-yeah no I
A: And I worked through it, I gotta I gotta work through it like (p 64);

#4 – A: It's a shitty situation, it's nothin', I'm not bragging about this, I don't feel good about this, you see me sick to my stomach, I don't like it, it hurts. Going to trial and startin' all this stuff, it's not easy, it's not an easy game, it's not easy on anybody. … (p 75);

#5 – A: The truth of my daughter a bit of my past to give you about what type of person I am and what molded me like this
Q: Mhm
A: And how these I ended up here 'cause there's more than just one thing there's things leading up to it.
Q: Mhm
A: You know when you open that up and you see how I started to feel I have to use the bathroom it makes me sick to my stomach because it hurts me. And here I am down the road again. (p 79);

#6 – A: I think that's bullshit. So, if you want to go about my daughter, you bet it hurts me, you bet it's a shitty fuckin' system that we stand for
Q: That's not what I'm talkin' about
A: It makes me sick to my stomach. That's why, when I start talkin' about my daughter I'm sick to my stomach because of someone fucked my daughter up, which happened (p 91).

[26] Corporal Donison testified at the *voir dire* that the respondent was sober and there was nothing that showed he was physically ill. Corporal Donison interpreted his statements about feeling sick as indicative of his emotional state when thinking about his daughter and family or the overall situation he found himself in. Corporal Donison

testified that based on the context of the conversation it was not his understanding he was physically ill with a stomach ailment.

[27] I agree with Corporal Donison's assessment of the respondent's references to feeling sick. I am not suggesting that the respondent may not have felt physically sick to his stomach while he was thinking of these events; but the sickness references reflected the respondent's mental state and were not statements of literal or physical ailments. At no time did the respondent request medical attention. There was no need to contact a physician or other medical help to assist based on the context of the respondent's statements.

[28] The respondent referred to his two requests to use the bathroom during the interview as further indications of his illness.

[29] The first time the respondent asked as follows:

> A: … We can draw a picture of Mikaela, a picture of Jessica, a picture of me, how in the fuck do the dots connect all up for this? Can I just use the bathroom quick?
> Q: Ab-absolutely. Just uh give me one sec and I'll hop the uh guard to uh
> A: Before I piss my pants.
> Q: Oh yep um and I apologize for that.
> A: I'm sick to my stomach
> Q: If uh if you need anything at all just let me know. Let me just grab a guard. (p 41)

[30] The second time the request was made as follows:

> A: I'm dead honest with you, so that's what I'm speculating on. It's all good. I have to use the bathroom anyway
> Q: Okay uh just give me one second.
> U: Did you want him out or?
> Q: Sorry?
> U: Oh I said are you ready to come out or whatever you needed

> Q: Okay just uh just give me one second, just give me one second Steven
> A: Like I said I got to use the bathroom
> Q: I'm sorry?
> A: I gotta take a piss
> Q: Okay uh he needs to use the washroom again. (pp 75-76)

[31] On both occasions the respondent's request was granted within a reasonable time. Both times he referred to needing to urinate. Although in the first request he added "I'm sick to my stomach" he did not elaborate or ask for other assistance. There was nothing about these requests that should or could have alerted the police officer that the respondent required medical attention or that he was in any kind of distress.

[32] I note the high threshold other courts have determined must be met for a statement made by an accused suffering from medical conditions to be ruled involuntary. For example, in *R v Park*, 2018 BCSC 945, the accused who was charged with second degree murder was an alcoholic experiencing alcohol withdrawal while he was held in custody. He experienced hallucinations and was suicidal. The police knew he was in withdrawal but did not obtain medical help. They showed the accused evidence from their investigation and the accused provided two statements to police. The accused attempted self-harm and was eventually taken to the hospital. The trial judge held that the police actions and conduct did not create a general atmosphere so oppressive that the accused was unable to exercise his free will. Further, the police actions and conduct did not overwhelm his choice to make the two statements.

[33] See also *R v CL*, 2021 SKQB 330, where a person suffering from schizophrenia was off their medication for a period of time, and his statement to police after his arrest

for sexual interference and sexual exploitation was found to be voluntary. He was found to have understood what he was saying to police and that there was jeopardy attached.

[34] The respondent's condition in the case before the Court does not approach the seriousness of the condition of the accused in *Park* or *CL*. To attract a ruling of involuntariness resulting in the exclusion of the statement requires conduct of a significantly more serious character than what occurred here.

[35] The respondent's second complaint that Corporal Donison continued to question him persistently after the respondent said he needed to speak with his lawyer does not on its own or combined with other factors create a reasonable doubt about the voluntariness of the statement.

[36] Corporal Donison spent significant time at the outset of the interview explaining to the respondent the police officer's role in the interview – to provide information about the charges and the process, and to give the respondent an opportunity to talk if he wished. Corporal Donison also explained the respondent's right to silence and cautioned him more than once that if he did say anything it could be used against him in court. He explained the respondent's right to counsel, his right not to be threatened or promised anything by police, and his right not to repeat anything to him that he had said to another police officer. Corporal Donison asked the respondent to repeat his rights to him in his own words to ensure he understood them. His answers showed he understood.

[37] Many times throughout the interview the respondent refused to answer questions, saying he would wait for a trial, wait for court or wait for his lawyer. This

occurred from time to time when Corporal Donison asked the respondent questions that could have elicited an incriminating answer. For example:

> Q: …The thing that I don't get based on what the investigators down there have told me so far is what triggered this, like why why did it happen because my understanding is that uh the girls basically just showed up in the vehicle and basically things just went sideways at that point. Was, was there something that Mikaela said? Did she say something, did Jessica say something?
> A: We'll wait until trial first
> Q: Did they do something? Okay.
> A: We're not having a trial here.
> Q: No, and absolutely not. I'm certainly not a judge and I'm not a jury but you can understand why, like, for me
> A: Well, fuck, yeah, you guys are shook up, like what the fuck is going on? You're here for the safety of somebody for sure.
> Q: Yeah. (p 24)

[38] From there the conversation moved to another topic.

[39] A second example is:

> Q: Well you're you're you're not you're not doing a bad job here today. It-I uh I just want to get back to the point that I was that I was driving at just a few moments ago Steven. Um I don't want to walk out this room here today
> A: Yeah
> Q: Thinking to myself that…
> A: … We should have the lawyers here
> Q: I'm sorry?
> A: We should, I should have my lawyer present
> Q: But he-he's not it's-it's you and I, right?
> A: Yep, that's why I'm not saying much.
> Q: Yeah a-and it's it's your choice but all I'm saying Steven is that I hope that I don't walk out of here today with the nagging feeling that there is far more to this story and, most importantly, if there's shit here that shouldn't be here, for God sakes let's talk at least about that.
> A: I did. If it's forcible confinement why was I on the fuckin' plane to Whitehorse and sat with her for fuckin'

> hours? You guys are making it seem like I fuckin' was followed her to fuckin' make she sure that she isn't talkin'?
> Q: Yeah n-no (p 37).

[40] Corporal Donison then explained the forcible confinement charge related to Jessica (not Mikaela, to whom the respondent was referring) and moved on to a different topic.

[41] The threshold for a finding of involuntariness in the context of asking questions persistently in the absence of counsel is also high. In *R v Salomonie*, 2014 NUCJ 16, the accused who was charged with first degree murder was questioned for approximately 12 hours. During that time, he asked numerous times to be returned to his cell. The police denied his requests and kept questioning him. They also showed him pieces of evidence against him and played pleas from the victims as well as his own family members to confess. The eventual statement he provided was found to be voluntary. The court held:

> The police also denied Salomonie's requests to be returned to cells.
>
> The police are permitted to persist or continue with the questioning in such circumstances, in furtherance of their obligation to investigate.
>
> Indeed, society would expect, in such a serious matter, the police to persist in their questioning despite requests by the prisoner to be taken back to cells and despite the prisoner reminding the police of his or her right to remain silent.
>
> There is nothing unusual about this. The law allows it. (paras. 208-300)

[42] The Supreme Court of Canada in *Singh* articulated this distinction between speaking and being spoken to in the context of custodial interviews. At para. 28, the court wrote:

> What the common law recognizes is the individual's right to *remain* silent. This does not mean, however, that a person has the right *not to be spoken to* by state authorities. The importance of police questioning in the fulfilment of their investigative role cannot be doubted. ... (emphasis in original)

[43] In other words, the police are entitled in the circumstances of custodial interviews to continue to ask questions. Society's expectation that criminal offences will be appropriately investigated and resolved means that police may pursue questioning. This entitlement is always balanced by the absence of an obligation on the accused to answer the questions. To ensure voluntariness, it is important for police to communicate clearly to a detained accused a proper caution including: the charges; the accused's right not to say anything; and that anything said could be used in evidence. A detained accused is not free to walk away and may as a result feel greater compulsion to give a statement.

[44] Here, the questioning by Corporal Donison was not intimidating, overly aggressive, or lengthy. Corporal Donison cautioned the respondent deliberately and thoroughly at the outset and remained aware and respectful of the respondent's right not to speak and of his right to legal counsel. He did not persist in asking the same questions over again once the respondent indicated his refusal. He continued asking other questions as he was entitled to do to continue the investigation. His questioning did not affect the voluntariness of the respondent's statement.

[45] Another example of Corporal Donison's forbearance was his approach to Jessica Aranda's statement. He offered to play the recording for the respondent. The respondent vehemently objected to listening to the statement. Corporal Donison did not pursue that request. This was not a situation where the accused was forced to listen to evidence gathered by police in support of the charges against him, in the hope it would encourage him to respond.

[46] Corporal Donison was careful throughout not to make any promises of leniency. In fact, on the couple of occasions the respondent asked questions about the penalty range for the charges he was facing, Corporal Donison declined to answer, saying he did not know.

[47] Towards the last quarter of the interview, Corporal Donison emphasized to the respondent the importance of being honest with himself and the importance of "taking ownership". This was an attempt to provide a moral or spiritual inducement, suggesting the respondent would feel better if he were to talk about what happened.

[48] As the court in *Oickle* held (paras. 79-80), these kinds of comments do not contain an implied threat or promise as there is no *quid pro quo.* A possible benefit of feeling better about oneself after giving a statement or confessing is not within the control of the police officer. It is a moral inducement that does not undermine the voluntariness of any statement.

[49] At the outset of the interview, Corporal Donison listed eight charges against the respondent. They were: aggravated assault, assault, uttering threats, pointing a firearm, careless use of a firearm, forcible confinement, unsafe storage of a firearm, and

possession of a weapon[2]. This was an increase in the number of charges from the charge of assault with a weapon he was advised of on arrest. It was not clear from the evidence when the respondent first learned of the seven additional charges. It is possible they were read to him by Corporal Anderson at the APU after 5:00 p.m. before he spoke to his lawyer. Corporal Anderson testified that he read the "charges" to the respondent, not the charge, but did not testify what the charges were. Given this uncertainty, for the purpose of determining voluntariness, I will assume that Corporal Donison advised the respondent of these charges for the first time at the interview and that the respondent did not have the opportunity to speak to a lawyer about them before engaging with Corporal Donison in the interview.

[50] The question is whether the fact that the respondent had not spoken to his lawyer about the additional charges constituted a change in jeopardy sufficient to delay the interview until the respondent had a chance to speak again with legal counsel. As noted by the Supreme Court of Canada in *R v Smith*, [1991] 1 SCR 714 at paras. 27-28:

> … the police must restate the accused's right to counsel when there is a fundamental and discrete change in the purpose of the investigation, one involving a different and unrelated offence or a significantly more serious offence than that contemplated at the time of the warning [*R v Evans*, [1991] 1 SCR 869 at 893]

[51] This inquiry engages the implementational duty of s. 10(b) of the *Charter* and its effect on a detainee's right to choose whether or not to cooperate with a police investigation. If the detainee does not have relevant information required by new or changed circumstances, they may not have the ability to choose freely how to conduct themselves during the investigation. The purpose of s. 10(b) may not be fulfilled.

[2] The firearms charges have been stayed.

[52] A change in jeopardy is an accepted category among examples of changed circumstances. Generally, the opportunity to consult counsel and get advice is based on the reasons for detention or arrest. If the investigation takes "a new and more serious turn as events unfold, that advice may no longer be adequate to the actual situation, or jeopardy, the detainee faces" (*R v Sinclair*, 2010 SCC 35 at para. 51). The detainee is then entitled to have a new consultation to obtain advice on the new situation in order to make an informed choice about whether to cooperate or not in the police investigation. Police tactics short of such a change may result in the Crown being unable to prove beyond a reasonable doubt that a subsequent statement was voluntary, rendering it inadmissible. When a new charge materially changes the accused's exposure to moral blameworthiness there is increased jeopardy requiring iteration of s. 10(b) rights (*R v Moore*, 2016 ONCA 964).

[53] Here, the respondent stated several times that his lawyer told him not to say anything. Many times throughout the interview he answered Corporal Donison's questions by saying they had to wait until the lawyers were there, wait for trial or wait for court. He clearly understood his right to remain silent and his lawyer's advice to say nothing, as communicated by the respondent.

[54] The question is whether another consultation with the lawyer with the information of the additional charges would make a difference in the respondent's choice to speak or not, to cooperate or not. The addition of further charges arising from the same incident only reinforces the advice already provided – that is, not to say anything, in effect not to cooperate with the police. The respondent was aware that the charges were serious – he repeated that several times throughout the interview. He was aware

of his jeopardy in a general sense, as he referred to the charges resulting in penitentiary time if he were convicted. At no time did the respondent appear confused or surprised by the charges. He defiantly objected to the forcible confinement charge as it related to Mikaela Cachene but beyond that did not refer to the charges specifically. He did not ask to speak to his lawyer again after hearing the eight charges from Corporal Donison.

[55] As a result, I do not find in the circumstances the information about the additional charges constituted a change in jeopardy necessitating a further consultation with counsel.

Conclusion on Statement #1

[56] In sum, it was apparent from watching and listening to the statement and reviewing the transcript that the respondent understood what he was saying and that anything he said could be used against him. There were no threats or promises held out to him other than moral inducements, which do not contain a *quid pro quo.* The respondent was not mistreated and there were no oppressive conditions. He was permitted to go to the bathroom twice on request. He was not questioned overly aggressively or in an intimidating manner and not presented with evidence that he did not want to hear or see. There was no police trickery. He clearly understood his right to remain silent and the absence of any obligation on him to speak, even if he was being made aware of additional charges for the first time at the outset of the interview. The statement was voluntarily provided.

Statement #2 – November 8, 2019

[57] The respondent raised only one issue with respect to the voluntariness of this statement. He again referenced a medical condition related to his intestines that had

plagued him while he was out in the bush. However, he did not request medical attention during the interview with Constable Kemp, nor did he complain of any pain or discomfort that made it difficult for him to continue.

[58] Constable Kemp reviewed the original charges with him of aggravated assault, uttering threats to cause death, assault with a weapon, use a weapon while committing an indictable offence, pointing a firearm at Jessica Aranda, unlawful confinement of Jessica Aranda and Mikaela Cachene, handling a firearm without lawful excuse and careless storage/careless use of a firearm, possession of a firearm while prohibited from doing so, and two breaches of recognizance. Constable Kemp said he had questions for him and it was his choice whether he wanted to answer them; he was not required to say anything to him; anything he did say could be used as evidence; and anything he had said to other police officers did not have to be repeated to him. Finally, he said he could not make any threats or promises to him. The respondent confirmed he had talked to his lawyer that day and he did not need to talk with a lawyer.

[59] As the respondent had done in the interview with Corporal Donison, he answered many of Constable Kemp's questions by saying they were not going there that day, they would go there at trial, they were not at trial and so on.

[60] The respondent did reference having intestinal issues when he was in the bush, but he did not say they were bothering him that day and he did not ask for medical attention.

Conclusion on Statement #2

[61] There were no threats, promises, oppressive conditions including aggressive questioning or use of evidence. The respondent's repeated statements about this not

being a trial and refusing to answer throughout showed he understood what he was saying and the effect if he said anything.

[62] I find there are no concerns arising from the circumstances of this statement to undermine its voluntariness.

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DUNCAN C.J.