Citation: *R. v. Butler,* 2026 YKTC 2

Date: 20260113
Docket: 25-00320
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

RANDY WADE BUTLER

Appearances:
Asher Loenen — Counsel for the Crown
Mark T. Chandler — Counsel for the Defence

This decision was delivered from the Bench orally and has since been edited without changing its substance.

RULING ON *CHARTER* APPLICATION

[1] CAIRNS T.C.J. (Oral): Randy Butler is before the Court for trial on summary charges contrary to ss. 270(1)(a) and 129(a) of the *Criminal Code* (the "*Code*").

[2] Mr. Butler alleges that his ss. 7, 8, 9, 10(a) and 10(b) *Charter rights* were violated. Pursuant to s. 24(1) of the *Charter*, as a remedy for the alleged *Charter* breaches, Mr. Butler seeks a stay of proceedings. In the alternative, pursuant to s. 24(2) of the *Charter*, he seeks the exclusion of all evidence related to his detention and arrest – footage and police testimony. In the further alternative, in the event he is

convicted of one or more of the charges he is facing, Mr. Butler seeks a reduction of sentence. Mr. Butler bears the burden of establishing the *Charter* breaches on a balance of probabilities.

[3] Counsel agreed to proceed with Mr. Butler's *Charter* application as part of a blended *voir dire.* The Crown called two police witnesses, Cst. Lafleur and Cst. Coburn. Mr. Butler did not present evidence. At the end of the *voir dire*, counsel for Mr. Butler and the Crown made submissions in relation to the *Charter* application, reserving submissions on criminal charges contrary to ss. 270(1)(a) and 129(a) of the *Code*, until after my ruling on the *Charter* application.

Facts

[4] On April 18, 2025, at approximately 1:45 a.m., a call for service regarding a disturbance in progress was received by Whitehorse RCMP. Three Whitehorse RCMP officers, Cst. Lafleur, Cst. Coburn, and Cst. Bourassa, responded to the call for service, arriving at 303C-11 Tarahne Way, Whitehorse, Yukon at approximately 2:00 a.m. The Occurrence Report prepared by Cst. Lafleur was filed as an Exhibit. It includes the text of the Dispatch Report, which reads as follows:

> disturbance ip // slamming doors, items being thrown, person hitting the ground, yelling for the last couple of hours // said this has been happening last couple of weeks // pr is a talia lnu, has an abusive ex partner reggie lnu // no children in residence, older canine in res unk how it will react to police // unk weapons // does not want his name mentioned @0156hrs – yt11 op19 – com calling to advise updated, for sure domestic dipsute – yelling, swearing – people crying in hallway – uk weapons – alc btb factor @233hrs yt12 op26 // ems req for soc, pos stab wound // large stab wound on the leg

[5] The Dispatch Report indicates that two calls were made, the second being at 1:56 a.m. just prior to the officers' arrival. Both calls raised concerns about an ongoing domestic dispute.

[6] Two of the officers, Cst. Lafleur and Cst. Coburn, activated their body-worn cameras upon arrival at the scene. Portions of the audio and video footage (the "footage") were entered as Exhibits on the *voir dire*.

[7] Cst. Lafleur testified that, before arriving at the door, he could hear loud noises and screaming. Upon arrival, the footage shows Cst. Lafleur knocking repeatedly at the door, announcing the police presence, advising that there had been a call for service, and that the safety of everyone inside needed to be confirmed. His testimony was that upon knocking and announcing the police presence, the noise inside stopped and nothing was heard for a while.

[8] Cst. Lafleur is seen on the footage covering the peephole in the door with a gloved finger. Following the knocking and his announcement that the police were present, there is a muffled exchange with the occupants who are heard saying several times that a warrant is needed and that the police are not allowed in. Cst. Lafleur says they do not need a warrant in exigent circumstances. More than once, he says that the safety of those inside needs to be confirmed and, further, that they will open the door with force if the occupants do not open the door. According to the time stamp on the footage, the knocking and verbal exchange continues for almost 4 minutes; the first knock is at 02:00:35 and the door opens at 02:04:18. When the door is opened, a woman, later identified as Natalia Shelley, says "hi" and begins exiting. A male, later

identified as Randy Butler, can be seen behind the partially opened door. At the same time, Cst. Lafleur says “something is obviously going on”.

[9] A scuffle immediately ensues involving the three officers and both occupants. Ms. Shelley is heard yelling more than once, “you are not allowed,” and “back up” and “you are not allowed in my house. I never let you in.” Cst. Lafleur testified that Mr. Butler was attempting to close the door. Cst. Coburn testified that he was able to open the door a bit more and that Mr. Butler was holding on to the frame of the door, trying to prevent the RCMP from extracting him. The grappling continued between the RCMP and Mr. Butler and Mr. Butler is pulled out and put on the ground.

[10] The skirmish continues with Mr. Butler on the ground. At 02:04:38, Mr. Butler is told he is under arrest and handcuffed. He asks, “what are you doing” several times, to which he receives no response. While handcuffed, Mr. Butler continues to struggle, swearing, insulting the officers, and threatening them. Nearby, Ms. Shelley can be heard sobbing and crying.

[11] With Mr. Butler out of the apartment and handcuffed on the ground, at 02:05:16, Cst. Coburn attempts to enter the apartment, the apparent purpose being to conduct a safety search. Mr. Butler continues swearing, threatening, and kicking at Cst. Coburn from the ground in what seems to be an effort to prevent him from entering the apartment. A large bloody patch on Mr. Butler’s upper leg is noted by Cst. Coburn. Cst. Coburn enters the apartment at 02:05:36, does a quick sweep, and notes a hole in a wall, but locates no other occupants, exiting at 02:06:49.

[12] Shortly thereafter, Mr. Butler is led down the stairs to the police car. On the way downstairs, there is a limited exchange between Cst. Lafleur and Mr. Butler. Cst. Lafleur is heard saying, at 02:08:10, “dude, you only had to open the door” and “it didn’t have to go this way.” When Mr. Butler begins to respond, Cst. Lafleur tells him not to start answering anything.

[13] Exiting the building takes some time as Mr. Butler’s dog is in the hallway following them and there is an attempt to bring the dog back to the apartment unsuccessfully. Once on ground level, Mr. Butler is brought to a police vehicle and searched. As he appears unwilling to get into the vehicle, he is pulled in by an officer. Mr. Butler is secured in the vehicle by 02:10:25. Cst. Lafleur then speaks briefly to the additional officers who have arrived and are present in the parking lot. He directs them to calm Ms. Shelley down, to find out what has been going on, and to return the dog to the apartment. Cst. Coburn says he will return to the apartment to take photographs.

[14] Cst. Lafleur tells the other officers that he needs at least one other officer to join him in the police vehicle. He enters the vehicle at 02:11:34, with an unidentified officer joining him at 02:12:08. Starting at 02:12:39 and continuing, Mr. Butler is heard yelling, swearing, threatening and insulting the officers, while a loud banging noise is heard from where he is secured. Inside the police vehicle, Cst. Lafleur removes his glove, collects his notepad and pen, appears to check the time, and at 02:14:33, informs Mr. Butler that he is arrested for mischief, reading Mr. Butler his s. 10(a) and s. 10(b) *Charter* rights verbatim from a card. Mr. Butler yells and swears throughout. He is twice asked if he wants to call a lawyer; he responds by yelling, insulting, and threatening.

[15] Mr. Butler is then taken to the Arrest Processing Unit ("APU"). Cst. Lafleur testified that enroute to the APU, Mr. Butler continued threatening, screaming, and was also banging on the "silent patrolman" inside the vehicle. Cst. Lafleur testified that, once at APU, Mr. Butler continued to scream, swear, threaten, and, at some point, spat on Cst. Lafleur's arm. Cst. Lafleur's evidence is that RCMP then took Mr. Butler to the ground. Subsequently, a spit hood was put over Mr. Butler's head. At 02:38:26, when the spit hood was put over Mr. Butler's head, the footage shows that Mr. Butler had a bloody cut on his forehead. When questioned by counsel for Mr. Butler, Cst. Lafleur said he did not know how Mr. Butler got the head injury but agreed that he did not have it at the time of arrest.

[16] At the APU, the injury to Mr. Butler's leg was assessed. Cst. Lafleur described it as a stab wound for which he required medical attention. He was escorted to the hospital.

First Arrest

[17] I return now to the evidence surrounding the two arrests of Mr. Butler. The first arrest occurred during the scuffle in front of the apartment; the second arrest occurred in the police vehicle.

[18] When testifying, Cst. Coburn was not asked and did not identify which of the three officers made the first arrest.

[19] Cst. Lafleur testified that he believed it was Cst. Coburn who first arrested Mr. Butler. He was invited to review his notes to aid his memory. After having done so,

he confirmed that he believed it was Cst. Coburn who had arrested Mr. Butler at the door of the apartment. This testimony is inconsistent with what Cst. Lafleur wrote in his Occurrence Report, which reads:

> Cst. Lafleur arrested BUTLER at the door of the unit and pulled him out.

[20] However, Cst. Lafleur was not cross-examined on this inconsistency. Given that there were three officers present – the third being Cst. Bourassa – and the inconsistency between Cst. Lafleur's testimony and his Occurrence Report, I am unable to determine with certainty who arrested Mr. Butler during the scuffle in front of the apartment.

[21] According to the time stamp on the footage, the first arrest of Mr. Butler occurred at 02:04:38. During this first arrest, Mr. Butler was not advised of the grounds for the arrest. When questioned about the basis for the arrest, Cst. Coburn could not articulate what the grounds for arrest were.

> **Question**: Do you agree with me that up to this point, there is no basis to arrest Mr. Butler? You're investigating a noise complaint and a potential domestic dispute. There's no basis to arrest him, do you agree?
>
> **Answer**: I don't believe so. Because on my, uh, from my viewpoint, when I came up, Cst. Lafleur would have had a better view of Ms. Shelley and Mr. Butler.

[22] When questioned about the first arrest, Cst. Lafleur explained that the arrest was for obstruction of enjoyment of property due to the noise disturbance. He agreed that none of the officers had been inside the apartment at that time and, as such, none of them were aware of the damage to the wall of the apartment. He did not agree that there was no basis to arrest Mr. Butler at that time. When asked about providing

Mr. Butler with his *Charter* rights, he said they were not provided because Mr. Butler was an “actively resistant suspect”.

Second Arrest

[23] Mr. Butler was arrested a second time in the back of the police vehicle by Cst. Lafleur for mischief. When questioning Cst. Lafleur about the basis for the mischief charge, counsel for Mr. Butler pointed out that, on the Occurrence Report, Cst. Lafleur had written that the mischief charge was due to damage in the residence and, further, that at the time of Mr. Butler’s first arrest, none of the officers had been inside the residence to observe the damage. Cst. Lafleur agreed.

[24] Cst. Lafleur also testified that, based on his observations of Ms. Shelley, there were reasonable grounds to arrest Mr. Butler for assault. Cst. Lafleur, who was closer, said Ms. Shelley’s face was red, swollen, under her eyes was wet from crying, and he could see a bit of blood coming out of her nose and lips from close by. In contrast, Cst. Coburn described the female’s face as flush upon exiting the apartment, saying that he did not know if she had been crying or hurt.

[25] Counsel for Mr. Butler challenged Cst. Lafleur on his observations about Ms. Shelley’s appearance when she exited the apartment. Footage of Ms. Shelley’s appearance as she exited was put to Cst. Lafleur. He maintained that he saw blood on her face at that time. Cst. Lafleur’s observations, particularly that Ms. Shelley had blood on her face, are not corroborated by the footage and I give them little weight.

Alleged *Charter* Breaches

Was Mr. Butler arbitrarily detained in breach of his s. 9 Charter rights?

[26] Section 9 of the *Charter* states:

> Everyone has the right not to be arbitrarily detained or imprisoned.

[27] Mr. Butler argues that he was arbitrarily detained while he was inside the apartment, Cst. Lafleur was covering the peephole, knocking, and commanding the occupants to open the door. As noted earlier in this ruling, the RCMP attended the residence in response to two calls about a potential domestic dispute. I agree that Mr. Butler was detained in the apartment; the question is whether the detention was arbitrary.

[28] A lawful detention is not arbitrary (*R. v. Mann*, 2004 SCC 52, at para. 20). The lawfulness of a detention may flow either from the statutory or common law duties of police. In assessing whether Mr. Butler's detention was arbitrary, the focus is on the common law duties of police when responding to emergency calls, as occurred here. As set out in *R. v. Godoy,* [1999] 1 S.C.R. 311, at para. 12:

> The accepted test for evaluating the common law powers and duties of the police was set out in *Waterfield*...If police conduct constitutes a prima facie interference with a person's liberty or property, the court must consider two questions: first, does the conduct fall within the general scope of any duty imposed by statute or recognized at common law; and second, does the conduct, albeit within the general scope of such a duty, involve an unjustifiable use of powers associated with the duty.

[29] First, in this case, in responding to the two calls made to dispatch about a potential domestic dispute, I find that the RCMP were acting well within the scope of their common law duties to investigate 911 or distress calls (*Godoy*, para. 11). The Supreme Court of Canada has held that the common law duties of the police include the "preservation of the peace, the prevention of crime, and the protection of life and property" (*Godoy*, at para. 15).

[30] Second, I find that the RCMP conduct in knocking on the door and demanding it be opened so that the safety of the occupants could be confirmed was a justifiable use of their powers. The RCMP could not be satisfied that the occupants were safe simply by assurances from behind a closed door.

[31] In the circumstances, I find that Mr. Butler's detention was reasonably necessary for the RCMP to carry out their common law duties. His detention was not arbitrary. Mr. Butler has not satisfied me that his s. 9 *Charter* rights were breached.

Was there a warrantless search of the residence in breach of Mr. Butler's s. 8 Charter rights?

[32] Section 8 of the *Charter* reads:

> Everyone has the right to be secure against unreasonable search or seizure.

[33] There were two searches of the residence, both by Cst. Coburn. The first is best characterized as a safety search; the second appears to have been to gather evidence.

[34] The first issue, however, is whether Mr. Butler has standing to argue that his s. 8 *Charter* rights were breached.

Standing

[35] The first issue that I must address is whether Mr. Butler has standing to argue that his s. 8 *Charter* rights were breached. Standing is merely the opportunity to argue the issue. To be granted standing, Mr. Butler must establish, on a balance of probabilities, that he had a reasonable expectation of privacy in the subject matter of the search, namely, the residence at 303C - 11 Tarahne Way.

[36] *R. v. Edwards*, [1996] 1 S.C.R. 128 is the governing case on standing and, at para. 45, sets out a non-exhaustive list of factors to consider when determining if an individual has a reasonable expectation of privacy. A claim of an expectation of privacy in a place must be both objectively and subjectively reasonable. Without a reasonable expectation of privacy, Mr. Butler has no standing to challenge the search (*R. v. Atta*, 2022 ONCJ 589, at para. 20).

[37] No evidence was provided about Mr. Butler's connection to the residence. I have no basis, other than his presence at the residence during the incident, to determine if his expectation of privacy is subjectively and objectively reasonable. In the footage, Ms. Shelley can be heard repeatedly saying that the apartment was hers; however, no evidence was called to establish who lived at the apartment. Turning to the *Edwards* factors, I have not been provided with evidence about whether either Ms. Shelley or Mr. Butler lived at the apartment. There was no evidence about the relationship between Ms. Shelly and Mr. Butler. I have no evidence that Mr. Butler had ever been at the apartment before, had historically used it, or had the ability to regulate access. In other words, I do not have evidence establishing that Mr. Butler had a subjective

expectation of privacy, nor do I have a basis to determine the objective reasonableness of any such expectation.

[38] Mr. Butler has not established on a balance of probabilities that he has standing to challenge the search, and I dismiss the claim that Mr. Butler's s. 8 *Charter* rights were breached.

[39] It is important to note, however, that had Mr. Butler satisfied me that he had a reasonable expectation of privacy in the residence, I would have found that the safety search conducted by Cst. Coburn was reasonable in the circumstances. Quoting *R. v. MacDonald*, 2014 SCC 3, at para. 29:

> The framework for scrutinizing warrantless searches for *Charter* compliance was summarized by this Court in *Mann*:
>
> > [Warrantless] searches are presumed to be unreasonable unless they can be justified, and hence found reasonable, pursuant to the test established in *R. v. Collins*, [1987] 1 S.C.R. 65. Under *Collins*, warrantless searches are deemed reasonable if (a) they are authorized by law, (b) the law itself is reasonable, and (c) the manner in which the search was carried out was also reasonable (p. 278). The Crown bears the burden of demonstrating, on the balance of probabilities, that the warrantless search was authorized by a reasonable law and carried out in a reasonable manner: *R. v. Buhay*, [2003] 1 S.C.R. 631, 2003 SCC 30, at para. 32. [para. 36]

[40] In this case, the RCMP had received two calls about a potential domestic dispute, including reference to a "person hitting the ground." Upon their arrival at the apartment, the RCMP were met with significant resistance and belligerence that prevented them from determining whether all occupants inside were safe or whether there was any need for assistance. Similar to *Godoy,* the occupants' refusal to answer

the door contributed to the appropriateness of the search of the apartment to ensure safety.

[41] The evidence presented in the *voir dire* made clear that the officers were subjectively concerned that there could be additional people in distress in the apartment. This concern was objectively reasonable in the circumstances. Cst. Coburn's safety search of the residence was necessary to ensure there was no-one else injured or in distress in the residence. Further, the search was conducted in a reasonable manner and there was no less invasive way of ensuring no-one else was in distress in the apartment. Cst. Lafleur testified that simply calling out into the apartment would not have been sufficient as an injured or deceased person would not answer; I agree. I find that Cst. Coburn's first search of the apartment was authorized pursuant to the police duty for the protection of life.

[42] However, I would not have reached the same conclusion with respect to the second search by Cst. Coburn, the purpose of which was to take photographs. The second search was not a safety search, and I would have found that it fell outside of the RCMP's common law powers, therefore being unreasonable.

Was there a breach of Mr. Butler's s. 10 *Charter* rights?

[43] Section 10 of the *Charter* provides that:

> Everyone has the right on arrest or detention:
>
> (a) to be informed promptly of the reasons therefor;
>
> (b) to retain and instruct counsel without delay and to be informed of that right; ...

Detention

[44] Individuals who are detained must be advised, in clear and simple language, of the reasons for the detention (*R. v. Mann*, 2004 SCC 52, at para. 21). In determining whether a breach of s. 10(a) of the *Charter* has occurred, as noted in *R. v. Evans,* [1991] 1 S.C.R. 869, at p. 888, "it is the substance of what the accused can reasonably be supposed to have understood in all the context and circumstances of the case, rather than the formalism of the precise words used, which governs." In other words, "substance controls, not form" (*R. v. Gonzales*, 2017 ONCA 543, at paras. 122 to 125).

[45] Mr. Butler was detained in the apartment prior to his arrest. Cst. Lafleur first knocked on the door at 02:00:35. At 02:00:51 and 02:01:00, he announced the police presence. There was no response from the occupants until the female occupant is heard saying at 02:01:55 that the police "are not allowed in". Twelve seconds after, at 02:02:07, Cst. Lafleur explains that there had been a call for service, and that there was a concern about a disturbance. The female occupant continues to say they "are not allowed in" and need a warrant. The male voice is heard first at 02:02:41. At 02:02:42, Cst. Lafleur reiterates that there was a call for service, he does not have a warrant, but the safety of everyone inside needs to be confirmed. This back-and-forth exchange continues in the same vein until the door opens.

[46] With this timeline, it is my view that Mr. Butler was promptly informed of the reasons for the detention, namely, the call for service and the need to ensure the safety of the occupants. On that basis, I find that Mr. Butler could reasonably be supposed to

have understood the basis for the detention (*R. v. Latimer*, [1997] 1 S.C.R. 217, at para. 31) and, therefore, no breach of his s. 10(a) *Charter* rights occurred.

Arrest

[47] Once extracted from the apartment, during an ongoing scuffle, Mr. Butler was told he was under arrest at 02:04:38. Mr. Butler was described by Cst. Lafleur as "actively resistant" and this description is confirmed by the footage. He was not provided his s. 10(a) or (b) *Charter* rights at that time.

[48] The right to be advised promptly of the reasons for arrest is not absolute. The term "promptly" must be understood contextually, considering the circumstances of arrest. Concerns for officer or public safety may justify a delay in providing s. 10(a) *Charter* rights (*R. v. Suberu*, 2009 SCC 33, at paras. 2 and 42), as can "emergent or exigent circumstances surrounding the arrest". In addition to officer and public safety, concerns justifying a delay may include restraining or calming a belligerent suspect, and, generally "if it is impractical in the circumstances" (*R. v. Nguyen*, 2016 BCCA 32, at para. 59).

[49] In this case, Mr. Butler was actively resistant from his arrest at 02:04:38 until he was led down the stairs at 02:07:07. At that point, as Mr. Butler was being walked away from the apartment, his volatility had abated, and the officers could have provided him with his s. 10(a) and s. 10(b) *Charter* rights. As noted above, Cst. Lafleur spoke to Mr. Butler as they walked out of the building and, in my view, could then have provided Mr. Butler with his s. 10(a) and (b) *Charter* rights.

[50] I am satisfied, on the balance of probabilities, that there was a breach of Mr. Butler's s. 10(a) and s. 10 (b) *Charter* rights from that point.

Was there a breach of Mr. Butler's s. 7 *Charter* rights?

[51] Section 7 of the *Charter* provides:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[52] Mr. Butler's claim that his s. 7 *Charter* rights were breached is based on the injury sustained to his head. As I understand it, Mr. Butler is alleging that the RCMP used excessive force during his arrest which amounted to a violation of his s. 7 *Charter* rights. It is not disputed that excessive use of force by police officers can amount to a violation of an individual's right to life, liberty and security of the person under s. 7 of the *Charter* (*R. v. Nasogaluak,* 2010 SCC 6, at para. 7).

[53] As can be seen on the footage, by the time that Mr. Butler was at APU and a spit hood was being placed over his head, he had a bloody cut on his forehead. Cst. Lafleur testified that he did not know how that injury occurred but agreed that Mr. Butler did not have it when he exited the apartment. Cst. Lafleur did not recall if Mr. Butler received stitches for the cut while he was at the hospital. There was no evidence from Mr. Butler as to how the injury was caused. The footage clearly shows that Mr. Butler was volatile upon arrest and Cst. Lafleur testified that the behaviour continued while at the APU. It is unfortunate that footage showing Mr. Butler's behaviour in the back of the police vehicle was not tendered given Cst. Lafleur's evidence that Mr. Butler was banging on

the “silent patrolman”. That evidence might have assisted by clarifying whether Mr. Butler had the head injury while in the police vehicle or, perhaps, if it was caused by the loud banging that could be heard while he was seated in the back of the police vehicle.

[54] Given the paucity of evidence explaining Mr. Butler’s injury, I am unable to do anything more than speculate as to how the injury was caused. As a result, I find that Mr. Butler has not met the burden of proving, on the balance of probabilities, that his injury was caused by excessive force of the RCMP. I find no breach of Mr. Butler’s s. 7 *Charter* rights.

Section 24 *Charter* Analysis

[55] Mr. Butler has not established that his ss. 7, 8 or 9 *Charter* rights were breached. However, I find that he has established that his s. 10(a) and s. 10(b) *Charter* rights were violated in connection with the first arrest. To summarize, by 02:07:07, Mr. Butler had temporarily calmed down and could have been provided his *Charter* rights. As noted above, while he was led out of the building, Cst. Lafleur exchanged words with him but failed to provide him with his *Charter* rights. He was arrested again at 02:14:33 and provided his s. 10(a) and s. 10(b) *Charter* rights at that time. There was a delay of seven minutes and 26 seconds between the first arrest and the time he was provided his s. 10(a) and 10(b) *Charter* rights. I find this was a violation of his s. 10 *Charter* rights.

[56] The remaining issue to be determined is what, if any, remedy is appropriate. Mr. Butler seeks a stay of proceedings, a remedy pursuant to s. 24(1) of the *Charter.*

In the alternative, Mr. Butler seeks the exclusion of all evidence related to his detention and arrest, a remedy pursuant to s. 24(2) of the *Charter*.

Section 24(1) of the *Charter*

[57] I will first consider section 24(1), which reads:

> 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.

[58] The remedy sought by Mr. Butler, a stay of proceedings, is only available in the "clearest of cases". The Supreme Court of Canada has recognized that there are rare occasions when a stay of proceedings for an abuse of process is warranted. A stay of proceedings is considered a "drastic" remedy as it permanently halts the prosecution of an accused, frustrating the truth-seeking function of a trial and depriving the public of the opportunity to see justice done on the merits (*R. v. Babo*s, 2014 SCC 16, at para. 30).

[59] Mr. Butler argues that the state conduct falls within the "residual category" described in *Babos,* that being where the state conduct creates no threat to trial fairness but risks undermining the integrity of the judicial process (*Babos*, at para. 31). Having considered the three requirements in the test applicable to the residual category as established in *Babos*, at paras. 32 and 35, I am satisfied that a stay of proceedings is not appropriate, that the breach of Mr. Butler's s. 10 *Charter* rights for a period of approximately seven minutes is not one of the "clearest of cases" requiring this drastic remedy. I decline to direct a stay of proceedings.

Section 24(2) of the *Charter*

[60] Section 24(2) of the *Charter* reads as follows:

> 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.

[61] The issue is whether the admission of evidence obtained in breach of Mr. Butler's section 10 *Charter* rights would bring the administration of justice into disrepute. If so, pursuant to s. 24(2) of the *Charter*, it must be excluded. The onus is on the Mr. Butler to establish, on the balance of probabilities, that the admission of the evidence would bring the administration of justice into disrepute.

Threshold Issue

[62] In conducting a s. 24(2) *Charter* analysis, there is a threshold issue. Mr. Butler must show, on the balance of probabilities, that the evidence was "obtained in a manner" that violated his rights. Mr. Butler seeks to exclude all information temporally, causally or contextually related to his detention and arrest – in this case, that evidence is the footage and the officers' testimony. Mr. Butler's *Charter* application also referred to "subsequent application for judicial authorization". I heard nothing specifically on that point and, therefore, decline to address that part of the application.

[63] The threshold question requires a connection between the *Charter* violation and the evidence obtained. The connection may be causal, temporal, contextual, or some combination of the three, but it must be more than remote or tenuous

(*R. v. Wittwer*, 2008 SCC 33, at para. 21). Courts are to take a "purposive and generous approach" to determining whether evidence was obtained in a manner that breached the rights of an accused (*R. v. Tim*, 2022 SCC 12, at para. 78).

[64] While I have found that the approximately seven-minute delay between Mr. Butler's first arrest and being advised of his *Charter* rights following the second arrest was a violation of his s. 10 *Charter* rights, no evidence was obtained during that period. However, if there is a sufficient temporal and contextual link between the evidence and either preceding or subsequent police breaches of an accused's *Charter* rights, the accused will have met the requirement of showing that the evidence was obtained "in a manner" that infringed the accused's *Charter* rights (*R. v. Reilly*, 2020 BCCA 369, at paras. 67 and 68). Given the temporal connection between the circumstances in which Mr. Butler is alleged to have resisted arrest by the officers, as shown in the footage, and the s. 10 *Charter* breach, I find Mr. Butler has met that threshold.

[65] The threshold issue being met, as set out in *R. v. Grant*, 2009 SCC 32*,* there are three components to the test for exclusion under s. 24(2) of the *Charter* that I must consider. Each will be considered in turn.

1. The seriousness of the Charter-infringing state conduct

[66] *Charter* violations vary on the spectrum of seriousness. On the one end are inadvertent, technical, and minor *Charter* breaches. On the other end is the deliberate or reckless disregard of *Charter* rights, as well as systemic patterns of *Charter*-infringing

conduct. The more serious the breach, the more it will pull towards exclusion of the evidence (*Grant*, at para. 74).

[67] Section 10 *Charter* rights include the s. 10(a) right to be informed promptly of the reasons for the detention and the s. 10(b) right to counsel. These rights remedy the power imbalance between the state and detained people by requiring the state to inform detained people of the jeopardy they face and their right to speak to a lawyer, and to permit them to exercise that right. They ensure that detained people can seek legal advice concerning how to regain their liberty and make an informed choice whether or not to speak to authorities (*Grant*, paras. 21 and 22; *Latimer,* at para. 28).

[68] There are two reasons why the *Charter* imposes this requirement: first, because it would be a gross interference with individual liberty for persons to have to submit to arrest without knowing the reasons for that arrest, and second, because it would be difficult to exercise the right to counsel protected by s. 10(*b*) of the *Charter* in a meaningful way if one were not aware of the extent of one's jeopardy (*Evans*, pp. 886 and 887).

[69] Turning to the first factor for consideration - the seriousness of the *Charter*-infringing state conduct. As stated in *Grant*, at para. 72:

> ...The more severe or deliberate the state conduct that led to the *Charter* violation, the greater the need for the courts to dissociate themselves from that conduct, by excluding evidence linked to that conduct, in order to preserve public confidence in and ensure state adherence to the rule of law.

[70] Drawing further from *Grant*, at para. 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.

[71] At para. 75 of *Grant,* the Supreme Court of Canada went on to say:

> "Good faith" on the part of the police will also reduce the need for the court to disassociate itself from the police conduct. However, ignorance of *Charter* standards must not be rewarded or encouraged and negligence or wilful blindness cannot be equated with good faith...

[72] In this case, the failure to advise Mr. Butler of his s. 10 *Charter* rights over a seven-minute period, is best characterized as relatively minor or technical. There is no evidence of bad faith nor of a pattern of such behaviour. I find that the seriousness of the breach is further mitigated by the fact that Cst. Lafleur made no attempt to elicit any evidence from Mr. Butler during this seven-minute period.

[73] The first factor pulls towards exclusion, albeit not strongly.

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

[74] On the question of impact, the "extent to which the *Charter* breach actually undermined the interests protected by the right" must be carefully evaluated (*Grant*, at para. 76). The potential impact also falls along a spectrum. The impact of the *Charter* violation may range from "fleeting and technical to profoundly intrusive." The greater the impact, the greater the risk that the admission of the evidence would bring the administration of justice into disrepute. The presence, or absence, of a causal connection between the violation and the evidence sought to be

excluded, while not determinative, is a factor to consider at this stage. Like the first factor, the more serious the breach, the more it will pull towards exclusion of the evidence (*R. v. Beaver*, 2022 SCC 54, at para. 123).

[75] In this case, the breach was relatively minor and technical. There is no causal relationship between the s. 10(a) and s. 10(b) *Charter* violations and the evidence Mr. Butler seeks to exclude. These factors mitigate the impact of the breaches (*R. v. Mian*, 2014 SCC 54, at para. 87).

[76] Similar to the first factor, I find that the second factor pulls only weakly towards exclusion.

Society's Interest in an Adjudication on the Merits

[77] The third factor, society's interest in the adjudication of a case on its merits, asks whether the truth-seeking function of the criminal trial process would be better served through the admission or exclusion of the evidence. Society generally expects that a criminal allegation will be adjudicated on its merits (*Grant*, at para. 79). I am to 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 (*Grant*, at para. 79).

[78] The more reliable and important the evidence to the Crown's case, and the more serious the offence, the stronger the societal interest in an adjudication on the merits will be. This factor will almost always pull in favour of admission of the evidence (*Beaver*, at para. 129; *Grant*, at paras. 79 to 83, and 115).

[79] The evidence Mr. Butler seeks to exclude includes footage of the skirmish in front of the apartment. This is reliable evidence. The exclusion of this evidence would likely have a significant impact on the Crown's ability to prosecute. However, it is also true that the summary offence Mr. Butler is charged with is not the most serious. On balance, I find this factor pulls moderately towards admission.

Balancing

[80] The first two factors favour exclusion, albeit weakly. The third favours admission moderately. Having balanced the factors, in my view, the evidence should be admitted.

[81] Before concluding, Mr. Butler also raised a further alternative in his *Charter* application, namely, that should he be convicted of any of the charges, a reduction of sentence be considered. As Mr. Butler has not been convicted of any charges at this point, that remedy is not available for my consideration.

_____

CAIRNS T.C.J.