

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
HIS MAJESTY THE KING	)	
	)	Michelle Soucy, for the Respondent
– and –	)	
	)	
CURTIS MORRISON	)	
	)	
	)	Yashar Tahmassebpour, for the Defendant
	)	
	)	
	)	<b>HEARD:</b> July 4,5,6,7/2023
		August 22, 2023
		January 3, 2024

**BRAMWELL, J.**

**Introduction**

- [1] On November 15, 2021, Curtis Morrison was arrested by an OPP officer at a gas station rest stop along the 401 near Cornwall. After his arrest, police searched his car and located a leather satchel in the rear passenger side footwell of the car. The satchel contained a loaded restricted handgun, cocaine and cannabis. Mr. Morrison was charged with obstructing police, possession of cocaine and various offences relating to the gun, including possession of a loaded, restricted firearm.
- [2] Mr. Morrison, who is Black, alleged that he was stopped by the arresting officer as a result of racial profiling. He also argued that his arrest was in breach of s. 9 of the *Canadian Charter of Rights and Freedoms* (*Charter*) and that the search of his vehicle was in violation of s. 8 of the *Charter*. Mr. Morrison argued that the evidence of the gun and drugs found in the vehicle should be excluded pursuant to s. 24(2) of the *Charter* because its admission would bring the administration of justice into disrepute.
- [3] In the alternative, if this Court does not find that any of the *Charter* breaches have been made out or that the evidence should not be excluded pursuant to s. 24(2), Mr. Morrison argued that the Crown has not proven that he was in possession of the gun and drugs because the Crown

has not proven beyond a reasonable doubt that he knew the gun and drugs were in the vehicle and that he exercised control over them.

- [4] For the reasons that follow, I find that there is insufficient evidence to allow me to conclude, on a balance of probabilities, that racial profiling played a role in the police investigation of Curtis Morrison.
- [5] I find that the arrest of Mr. Morrison was not valid and violated his s. 9 *Charter* rights. Accordingly, I find that the search of his vehicle violated his s. 8 *Charter* rights because it was not done pursuant to a valid arrest and there was no other lawful purpose for the search articulated by the police.
- [6] I find that the evidence should be excluded pursuant to s. 24(2) of the *Charter*.
- [7] Given my findings on the *Charter* applications, it is not necessary for me to make a finding as to whether the Crown has proven beyond a reasonable doubt that Curtis Morrison possessed the gun and drugs. However, in the event that I am wrong in any or all of my *Charter* analyses, I would find that the Crown has not proven possession beyond a reasonable doubt.

### **The racial profiling allegation**

#### ***What is racial profiling and how does a court decide if it has occurred?***

- [8] The Ontario Court of Appeal has defined and provided a framework for the analysis of racial profiling allegations as follows<sup>1</sup>:

Racial profiling is criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group.

.....

A racial profiling claim could rarely be proven by direct evidence. This would involve an admission by a police officer that he or she was influenced by racial stereotypes in the exercise of his or her discretion to stop a motorist. Accordingly, if racial profiling is to be proven it must be done by inference drawn from circumstantial evidence. . . . [W]here the evidence shows that the circumstances relating to a detention correspond to the phenomenon of racial profiling and provide a basis for the court to infer that the police officer is

---

<sup>1</sup> *R. v. Brown*, [2003] O.J. No. 1251 (C.A.).

lying about why he or she singled out the accused person for attention, the record is then capable of supporting a finding that the stop was based on racial profiling.

[9] The following additional points were made by the Ontario Court of Appeal that bear upon the analysis in this case:

1. The attitude that underlies racial profiling may be consciously or unconsciously held. Consequently, a police officer need not be an overt racist to engage in conduct based on unconscious racial stereotyping.<sup>2</sup>
2. A police officer who stops a motorist based on their race or colour has no articulable cause for the stop.<sup>3</sup>
3. A racial profiling claim is rarely going to be proved through direct evidence. That would require an admission by the officer that racial stereotypes influenced the decision to stop the accused. Accordingly, if racial profiling is to be proven, it “must be done by inference drawn from circumstantial evidence.”<sup>4</sup>
4. One way of proving racial profiling is to compare the facts with the *indicia* of racial profiling to provide a basis for the inference that the officer is untruthful about why the plaintiff was singled out. The record is then “capable of supporting” a finding of racial profiling.<sup>5</sup>

[10] It is not necessary to find that an officer is lying about the reason for stopping the accused. Indeed, the officer may be genuinely unaware of the effect of subconscious biases that may have influenced his attention being drawn to the accused. The focus of the analysis is not on whether the officer has been demonstrated to have misled the court. It is on whether “the circumstances give the court a basis upon which to reject the officer’s evidence as untrue because they are indicative of racial profiling.”<sup>6</sup>

[11] As the Ontario Court of Appeal put it in *R. v. Sitladeen*:<sup>7</sup>

This approach to the correspondence test is consistent with the concept of unconscious bias, where a person either does not recognize, or does not acknowledge his own bias. An officer who has unconsciously allowed racial stereotypes to influence his decision to detain a racialized person may not believe he is being untruthful, and therefore may not be lying when he testifies that racial stereotypes played no role in the decision. Nevertheless, a trial

---

<sup>2</sup> *R. v. Brown*, *supra*, para. 8.

<sup>3</sup> *R. v. Brown*, *supra*, para. 10.

<sup>4</sup> *R. v. Brown*, *supra*, para. 44.

<sup>5</sup> *R. v. Brown*, *supra*, para. 133.

<sup>6</sup> *R. v. Sitladeen*, 2021 ONCA 303.

<sup>7</sup> *R. v. Sitladeen*, *supra*, para. 49.

judge is entitled to reject that evidence as untruthful, if the judge is satisfied, based on the circumstances consistent with racial profiling, that unconscious bias and racial profiling were factors in the decision.

[12] Further, even if it is demonstrated that the officer had objective grounds for the arrest, the defect in the arrest created by racial profiling is not cured. If racial profiling is found to have played a role, to any degree, in the officer's selection of the accused as a suspect or his treatment of the suspect, the arrest is unlawful.<sup>8</sup>

[13] In summary:

there are two components to racial profiling. The first is the attitudinal component, which is the acceptance by a person in authority that race or racial stereotypes are relevant in identifying the propensity to offend or to be dangerous. The second is the causation component, which requires that this race-based thinking consciously or unconsciously motivate or influence, to any degree, decisions by persons in authority in suspect selection or subject treatment.<sup>9</sup>

***The evidence relating to racial profiling in this case***

[14] On November 15, 2021, OPP Cst. White was working alone, in uniform, on patrol in a marked police car. He had been a police officer for about two and a half years, having been hired by the OPP in April 2019.

[15] At approximately 8:00 p.m., Cst. White went to the On Route on the eastbound 401, going towards Long Sault, Ontario. He went to the On Route to conduct traffic enforcement investigations as he often did when it was not a busy night. Cst. White testified that he was planning to run license plate checks, look for traffic violations, suspended drivers and other criminal offences.

[16] The parking lot at the On Route was "not too busy". It was a Monday night. Cst. White described it as a "slow night" at the On Route.

[17] Cst. White testified that at 8:08 p.m., he observed "a vehicle that was getting gas." Cst. White was parked in the parking lot in front of the main On Route building where the restaurants and washrooms are. He described himself as being parked approximately in the middle of the distance between the gas station and the main On Route building.

[18] Cst. White testified that he did not recall any other cars being in the gas station pumping gas at the time. Cst. White said that it was not a busy night at the On Route based on the number

---

<sup>8</sup> *R. v. Dudhi*, 2019 ONCA 665, para. 62-63.

<sup>9</sup> *R. v. Dudhi*, *supra*, para. 66.

of cars in the parking lot. He said he did not recall whether the car he noted pumping gas was the only car in the parking lot though he acknowledged that there would possibly have been other cars there, associated with the employees of the On Route. Cst. White did not check the license plates of any other vehicles in the parking lot.

[19] Cst. White entered the license plate of Mr. Morrison's vehicle into his computer and learned that the registered owner of the vehicle was wanted out of the province of Quebec and was flagged as being possibly armed and dangerous as a result of having been convicted of "robberies." The terms relating to the warrant were in French. Cst. White speaks French but was not familiar with the terms he saw on his computer, so he Googled them on his phone. Ultimately, Cst. White determined that the warrant was what he described as "a tax warrant."

[20] Cst. White testified that he decided at this point that he was going to conduct a traffic stop to determine if the driver of the vehicle was the registered owner and, if he was, Cst. White was going to arrest him on the strength of the "tax warrant." Cst. White did not recall whether the warrant was endorsed or not, to allow an officer from outside of Quebec to execute it. Cst. White also testified that in most cases, when he sees information about an outstanding warrant on CPIC on his computer, it lists the charge that the warrant is outstanding for, together with the warrant. In this case, Cst. White did not recall whether there was a specific criminal charge listed and he testified that he had not written anything down about a charge in his notes.

[21] Cst. White looked at his onboard mapping system and saw that his colleague Cst. Kelly was close by. Cst. White called Cst. Kelly and told him that he had a vehicle with the registered owner wanted out of Quebec with "several flags and a history of robbery and firearms." Cst. White asked Cst. Kelly to attend at the On Route to assist him with the traffic stop.

[22] The male who had been putting gas into the vehicle then went into the gas station, paid for the gas, got into the car, drove around the parking lot and then parked in front of the main On Route building where the restaurants and washrooms are. The male then got out of the vehicle and went inside the building. The male later returned and got into the driver's side of the vehicle. At all times, the male was the lone occupant of the vehicle.

[23] Cst. White testified that it was his impression that the male was trying to avoid making contact with him. However, in cross-examination, Cst. White agreed that he saw no traffic violations, no burned-out lights on the vehicle, no concerning driving and had no indication that the driver was doing anything illegal or concerning. He agreed, in cross-examination, that all of the things he'd seen Mr. Morrison do – pumping and paying for gas, driving around the parking lot and going into and coming out of the On Route building – were all innocuous things that Cst. White would expect someone at a gas and rest station to do.

[24] In cross-examination, Cst. White also agreed that he had written in his notes that the driver of the vehicle was engaging in "strange behaviour." He testified that this was because he had observed, after the gas was paid for, the vehicle being driven to the back of the parking lot before returning to the front of the main On Route building. However, he was confronted with the fact that the note about strange behaviour was made in his notebook before that driving had occurred. Cst. White had no explanation for this.

- [25] Cst. White was cross-examined about whether his attention was drawn to Mr. Morrison in the first place because he is Black and whether he had particular concerns about Mr. Morrison's behaviour, which he characterized as "strange" because he is Black. Cst. White denied the suggestion that Mr. Morrison being Black factored into the investigation.
- [26] At 8:30 p.m., Cst. White asked, over the radio, for the communications centre to run the registered owner of the vehicle. A person from the communications centre responded and advised that the male was wanted and had a flag that alerted officers to proceed with caution. By that time, Cst. Kelly was at the On Route. Cst. White then asked the communications centre to broadcast the information he had just received over the air so that other officers would be aware of his location and what he was dealing with. In cross-examination, Cst. White agreed that the communications centre staff member advised him that the one robbery conviction showing for the registered owner was from 2009, some 12 years before.
- [27] At approximately 8:30 p.m., Cst. White and Cst. Kelly approached the vehicle. Cst. White was on the driver's side and Cst. Kelly was on the passenger side. They had each parked their police cars behind the vehicle, on an angle. This meant that the rear of the vehicle was blocked in by two police cars. The front of the vehicle was parked against a cement curb.
- [28] Cst. White approached the driver's side window and asked Mr. Morrison, who was the driver, to lower his window. Mr. Morrison complied by lowering his window partially. Cst. White asked Mr. Morrison whether he was the owner of the vehicle and Mr. Morrison replied that he was. Cst. White concluded that the warrant was for Mr. Morrison and so he advised Mr. Morrison that there was a warrant for his arrest out of Quebec. He told Mr. Morrison to turn off his vehicle and step out of it. Cst. White told Mr. Morrison that he was under arrest on the strength of the warrant.
- [29] Mr. Morrison told Cst. White that the warrant out of Quebec had been dealt with but that due to COVID there were still some issues with it. Mr. Morrison did not get out of his vehicle. Cst. White told him multiple times to get out of the vehicle but Mr. Morrison refused. Cst. White testified that he told Mr. Morrison that if he got out of his vehicle, Cst. White would check into the warrant further and if what Mr. Morrison was saying was accurate, he would be released unconditionally. Mr. Morrison continued to refuse to get out of the vehicle. Cst. White attempted to open the door of the vehicle to physically remove Mr. Morrison but found that the doors were locked. At some point in this exchange, Mr. Morrison raised the window and closed it. Cst. White noted that Mr. Morrison had a phone in one hand and a car key in the other. It looked to Cst. White as though Mr. Morrison was making a phone call. Cst. White testified that during this exchange, Mr. Morrison became belligerent with the officers and was swearing at them.
- [30] At some point, after the suggestion to do so was made over the air by another officer, a spike belt was put on the ground in front of Mr. Morrison's vehicle to prevent the vehicle from being driven away.
- [31] Cst. Clark, who is Black, arrived on scene and stationed himself in front of Mr. Morrison's vehicle. Shortly after Cst. Clark arrived, Mr. Morrison complied with Cst. White's instructions

and exited the vehicle. He was immediately placed under arrest, at 8:40 p.m., on the outstanding “tax warrant” and handcuffed. At some point before or during the arrest, at least four other police officers arrived on scene.

### *Analysis*

[32] I find that there is some evidence supporting the possibility that the fact that Mr. Morrison is Black factored, to at least some extent, into the selection of him as a suspect by Cst. White. In other words, there is some evidence supporting the possibility that Cst. White decided to run Mr. Morrison’s license plate because he is Black. However, many of the indicators of racial profiling that are commonly seen in cases of racial profiling are not present in this case. After a careful review of all of the evidence, I do not find that the evidence rises to the level of proving that it is likely or probable that Cst. White either consciously or subconsciously engaged in racial profiling when he decided to run Mr. Morrison’s plate. That is what Mr. Morrison would have to establish to be successful in this argument and I find that he has not done so.

[33] The evidence that supports the possibility that racial profiling occurred is as follows:

1. Mr. Morrison’s license plate was the first and only plate that Cst. White ran upon arriving at the On Route. Cst. White testified that he did not recall other cars being at the gas pump or other cars being in the parking lot. Mr. Morrison was out of his car, pumping gas, at the time that Cst. White decided to run his plate and so would have been visible to Cst. White who would have seen that Mr. Morrison is Black. I noted, and found it odd, that in his examination-in-chief, Cst. White said, three times, that “a vehicle was getting gas.” Of course, a vehicle doesn’t get gas. A person puts gas into a vehicle. Cst. White seemed to me to be being very careful in his examination-in-chief to avoid describing the person he witnessed putting gas into the car. I found his continued reference to the vehicle seemingly getting itself gas as a sign of this avoidance. In fact, the fact that Mr. Morrison is Black was not referenced for the first time until Cst. White was cross-examined.

This is consistent with “street check” practices that are considered to be an example of the manifestation of racial profiling in that it is an example of the police engaging in “heightened surveillance of racialized individuals...using general investigative powers” such as a license plate check.<sup>10</sup>

---

<sup>10</sup> *Applying the Racial Profiling Correspondence Test*, David M. Tanovich, Criminal Law Quarterly, 2017 Vol. 64, page 362 and 364.

2. Cst. White decided that he was going to arrest Mr. Morrison on the strength of what he understood was a “tax warrant” out of the province of Quebec, without first determining what exactly the warrant was for, including whether it was a Criminal Code warrant which might authorize his exercise of Criminal Code arrest powers, whether he as an officer in Ontario was authorized to act on the warrant and whether Quebec police were willing to attend in Ontario to continue the arrest and transport Mr. Morrison to Quebec.

Cst. White called Cst. Kelly for back up once he decided he was going to investigate whether the driver of the vehicle was the registered owner and, if he was, arrest him. This, despite the fact that the driver of the vehicle had done nothing suspicious, illegal or concerning and Cst. White had no concerns about the condition of the vehicle itself.

Cst. White repeatedly referred to there being “multiple” or “several” flags relating to Mr. Morrison. However, in his evidence, he indicated that at the time he decided to arrest the driver, assuming the driver was the registered owner, he knew that the registered owner had a tax warrant out for him in Quebec, and was flagged as potentially armed and dangerous due to a robbery conviction from 2009. In my view, that is one flag – that a person is potentially armed and dangerous.

Cst. White and Cst. Kelly used their police vehicles to block Mr. Morrison’s car in and placed a spike belt in front of his car. Cst. White also asked the communications centre to broadcast the fact that he was doing a traffic stop over the air so that his colleagues were aware of what he was “dealing with.” This, for an arrest on a “tax warrant” out of Quebec.

This is consistent with “over-reaction” by police as a manifestation of racial profiling through intensifying the investigation, for example with unjustifiable arrest, searches or excessive force, or responding to perceived danger with extreme force.<sup>11</sup>

3. Cst. White described Mr. Morrison’s behaviour as “strange” in his notes and avoidant in his evidence in examination-in-chief despite the fact that Mr. Morrison’s behaviour was completely innocuous and consistent with what is expected from motorists stopping at a rest stop on the highway.

---

<sup>11</sup> Applying the Racial Profiling Correspondence Test, *supra*, page 368; *R. v. Sitladeen* *supra*.



This is consistent with what Professor Tanovich labels the “spidey sense” manifestation of racial profiling with the police interpreting ambiguous behaviour as incriminatory. Such ambiguous behaviour has been found to include the suspect looking away, walking away from police or failing to make eye contact.<sup>12</sup>

[34] On the other hand, there are certain hallmarks of racial profiling that are not present in the evidence. For example, it does not appear that Mr. Morrison was investigated because of the type of car he was driving and Cst. White did not ask him questions such as what he was doing at that location at that time or whether he was subject to bail conditions. Cst. White simply asked the question that was appropriate at that juncture in his investigation – whether Mr. Morrison was the registered owner of the vehicle.

[35] I also have to consider the fact that Cst. White’s unchallenged evidence is that he went to the On Route, as he had done many times before, because it was a slow night and so he intended to run license plates. Cst. Kelly’s evidence supported the notion that this is a common practice for OPP officers in this area. Cst. White said he did not remember any other cars being at the gas pumps and he did not think there were a lot of cars in the parking lot. Without any other contextual evidence, it is impossible for me to determine whether Mr. Morrison was singled out because he was the only Black person in the area or whether Cst. White simply chose to investigate the license plate of the first vehicle he saw.

[36] Once Cst. White had information that there was an outstanding warrant for the registered owner of the vehicle, it makes sense that he continued with the investigation. In other words, it is not consistent with an instance of racial profiling in which the officer spots a Black person and then concocts a reason to interact with that person. In this case, the information about the warrant gave Cst. White a valid reason to remain interested in Mr. Morrison’s vehicle and in him as the driver and to continue his investigation.

[37] Further, with respect to Cst. White calling for back up from Cst. Kelly and, ultimately, other officers, on what he understood was an arrest on a “tax warrant,” I feel it is important to note that while I found there was a sense of overkill to Cst. White’s evidence about Mr. Morrison having multiple or several flags on CPIC about violence, dangerousness, and/or weapons, and initially referring to there being a flag about “robberies” plural when there was only one robbery conviction in CPIC, the fact is that Cst. White had at least some information that the registered owner of the vehicle he was looking at had been known at least in the past to engage in violent criminal behaviour while armed. Cst. White was in a highly public place and had a duty to approach the situation with caution for his own safety and that of members of the public. I cannot say therefore that Cst. White called for back-up in this situation because Mr. Morrison is Black and Cst. White, engaging in racial profiling, wrongly presumed Mr. Morrison to be inherently more dangerous because he is Black. He was not asked whether he calls for

---

<sup>12</sup> Applying the Racial Profiling Correspondence Test, *supra*, page 366; *R. v. Gala-Nyam*, 2023 ONSC 2241.

back up routinely when a registered owner is flagged the way Mr. Morrison was so I don't know whether he departed from his normal practice in this situation, when dealing with Mr. Morrison.

[38] With respect to the use of the spike belt, Cst. Kelly testified that he was the one who laid the spike belt down after hearing that suggestion made over the police radio. He considered it and decided it was a good idea because Mr. Morrison was not getting out of the car as Cst. White was asking him to and they were at a rest stop on the side of a busy highway. Cst. Kelly wanted to avoid any possibility that Mr. Morrison would take off onto the highway prompting a dangerous high-speed chase. Again, I don't have any evidence about whether Cst. Kelly has made or would make a similar decision anytime a person was behaving the way Mr. Morrison was. Further, the issue isn't really what was in Cst. Kelly's mind when he laid the spike belt down.

[39] The issue is whether Cst. White's attention was drawn to Mr. Morrison in the first place because of a conscious or subconscious belief that Mr. Morrison was more likely to be engaging in criminal behaviour simply because he is Black. In other words, the resolution of the racial profiling allegation, in my view, turns on whether I find that it is likely or probable that Cst. White engaged in racial profiling when he selected Mr. Morrison as a possible suspect. Although I have some concerns that racial profiling may have played a role in Cst. White choosing to run Mr. Morrison's license plate, I cannot say, based on the evidentiary record before me, that it is likely or probable. Mr. Morrison has therefore not met his burden of proof on this issue.

### **S. 9 breach allegation**

[40] S. 9 of the *Charter* provides that everyone has the right not to be arbitrarily detained or imprisoned.

[41] Mr. Morrison argued that Cst. White did not have the authority to arrest him because:

1. Cst. White believed he was arresting Mr. Morrison on an outstanding "tax warrant";
2. Cst. White did not take sufficient steps to determine whether he had the authority to act on an out of province warrant before he arrested Mr. Morrison; and
3. Cst. White did not take sufficient steps to establish that Mr. Morrison was the person to whom the warrant related.

[42] The Crown argued that Cst. White was acting under the authority provided to him by s. 514(2) of the *Criminal Code* in executing the warrant and that the warrant he was actually executing was a warrant for a breach of s. 145 of the *Criminal Code*.

***Additional evidence relating to the arrest***

[43] Cst. White testified that after he arrested Mr. Morrison on the outstanding warrant at 8:40 p.m., handcuffed him and took him to the police cruiser, he conducted a frisk search of Mr. Morrison. He then placed him in the back seat of the cruiser and read him his rights to counsel and cautions.

[44] At 8:44 p.m. Cst. White made a notebook entry about “contacting a Quebec agency.”

[45] At 8:55 p.m., Cst. White told Mr. Morrison that he was under arrest for obstructing a police officer as a result of Mr. Morrison’s earlier refusal to get out of the car and his subsequent locking of the keys inside the vehicle and he read him his rights to counsel and cautions again.

[46] Cst. White testified that he learned at 8:57 p.m., after arresting Mr. Morrison on the obstruct charge, that the warrant he initially arrested Mr. Morrison on was not endorsed as enforceable in Ontario and police from Quebec would not be attending to arrest Mr. Morrison on the warrant. Cst. White learned that Quebec police asked that he simply obtain Mr. Morrison’s contact information so that they could contact Mr. Morrison about the outstanding warrant and asked that Cst. White send Mr. Morrison on his way. Cst. White learned this after posing the question to the communications centre. He agreed that he could have asked this question of the communications centre in the 22 minutes that elapsed between him running Mr. Morrison’s license plate and learning about the outstanding warrant and then approaching Mr. Morrison’s vehicle.

[47] It was suggested to Cst. White in cross-examination that he had in fact learned prior to arresting Mr. Morrison on the obstruct charge that the warrant he initially arrested Mr. Morrison on was not enforceable in Ontario and that this knowledge was the reason for the arrest of Mr. Morrison on the obstruct at 8:55 p.m., 15 minutes after Cst. White had all the information necessary to form the grounds for the arrest on the obstruct. In other words, it was suggested to Cst. White that he arrested Mr. Morrison on the obstruct as a result of learning that the initial arrest was not going to “stick.” Cst. White denied this and maintained that he did not learn that the Quebec warrant was not endorsed for execution by an Ontario officer until after he had arrested Mr. Morrison on the obstruct charge.

***Analysis***

[48] I find that Cst. White breached Mr. Morrison’s s. 9 right not to be arbitrarily detained because he exercised his power to arrest Mr. Morrison on the outstanding warrant before he had sufficient information about the warrant to provide him with the necessary grounds to arrest on it.

[49] The Crown argued that s. 514(2) of the *Criminal Code* gave Cst. White the authority to arrest Mr. Morrison.

[50] S. 511 and s. 513 make it clear that a warrant is issued in and directed to the peace officers within the territorial jurisdiction of the justice, judge or court that issued it. In this case, the *viva voce* evidence about the warrant that was tendered through Cst. White was that this warrant

was out of the territorial jurisdiction of Quebec. It would therefore have been directed to the peace officers in the province of Quebec.

- [51] S. 514(1) provides that a warrant may be executed by arresting the accused wherever he is found within the territorial jurisdiction from which the warrant was issued, or wherever he is found in Canada, if he is being freshly pursued. Neither of those scenarios apply in this case. Mr. Morrison was not in Quebec, nor was he being freshly pursued.
- [52] S. 514(2) provides that an officer from the territorial jurisdiction that issued the warrant may execute the warrant in another territory. In other words, a Quebec police officer would have been able to execute the warrant outstanding for Mr. Morrison in Ontario, assuming it was a warrant issued under the *Criminal Code*.
- [53] S. 703 provides for what are commonly called Canada-wide warrants which allow for warrants issued out of superior courts and appeal courts to be executed anywhere in Canada.
- [54] The warrant that Cst. White arrested Mr. Morrison on was not tendered as an exhibit in this case so I do not know what it was for, whether it was a *Criminal Code* warrant, what section of the *Criminal Code* it was issued under and which court issued it. What I do know is that there is no evidence before me that it was a Canada-wide warrant pursuant to s. 703. Further, there is evidence before me that it was a warrant confined to the territorial jurisdiction of Quebec.
- [55] There is no evidence before me and no legal authority for the proposition that Cst. White had the authority to arrest Mr. Morrison on the outstanding warrant based on the information he had about the warrant at the time he arrested Mr. Morrison. At that time, all he knew was that it was a “tax warrant” and that it was “out of Quebec.” He did not even know if it was alleged that Mr. Morrison had committed a criminal offence and was therefore wanted on a *Criminal Code* warrant, let alone whether that offence was an indictable offence or whether the warrant was endorsed to allow an out of province arrest.
- [56] The Crown argued that reasonable and probable grounds should be attributed to Cst. White for an arrest on another apparently outstanding warrant for a breach of s. 145 of the *Criminal Code*. First, the evidence relating to this other apparently outstanding warrant, as referred to by one other officer in his evidence, is far from clear. Second, and perhaps more importantly, Cst. White’s evidence was clear. He stated, numerous times, that his first arrest of Mr. Morrison was as a result of one outstanding warrant, out of Quebec and that that one warrant had something to do with taxes in his mind. It is Cst. White’s evidence as the arresting officer as to the basis for the arrest that is important to the analysis, not what other officers thought that Mr. Morrison could have been arrested for.
- [57] Cst. White should have taken additional steps to satisfy himself as to exactly what criminal charges, if any, the warrant was for that he was arresting Mr. Morrison on, whether he was authorized, as an Ontario police officer to arrest on the warrant, and on what basis, whether Quebec police would return Mr. Morrison if Cst. White did have the authority to arrest him and

whether the warrant was in fact still in effect.<sup>13</sup> Cst. White did none of these things. He proceeded with an arrest of an individual who was doing nothing illegal or concerning based on a woefully insufficient knowledge of what he was doing and why. In my view, this is a clear breach of Mr. Morrison's s. 9 *Charter* rights.

### **S. 8 breach allegation**

[58] S. 8 of the *Charter* provides that everyone has the right to be secure against unreasonable search or seizure.

[59] Mr. Morrison argued that Cst. White breached his s. 8 rights when he conducted a pat down or frisk search of Mr. Morrison after placing him under arrest and handcuffing him. Mr. Morrison argued that this was a breach because the provisions of the Quebec penal code applied to this arrest because Cst. White Googled the French terms he saw on his computer screen and believed that it was an outstanding tax warrant from Quebec and that he was required to bring Mr. Morrison before a judge. Mr. Morrison argues that these facts put his situation within the parameters of the findings of the Quebec Court of Appeal in *R. v. Martinbeault*<sup>14</sup> that the Quebec Penal Code requires that the police use arrest procedures involving minimal detention. This means that according to the Quebec Penal Code, a pat down search is a warrantless search and unconstitutional when a warrant is being executed on an administrative matter such as a non-payment of fines. Mr. Morrison argued that is what Cst. White, on his own evidence, was doing in this case and so *R. v. Martinbeault* applies.

[60] Further, Mr. Morrison relied on *R. v. Buakasa*<sup>15</sup> to argue that, even if I do not accept that the Quebec Penal Code applied to the arrest of Mr. Morrison, when the police have no concerns about officer safety or the accused fleeing the scene, a frisk search such as the one done in this case is a breach of Mr. Morrison's s. 8 *Charter* rights. Mr. Morrison argued the evidence showed the police had no such concerns in this case.

[61] More significantly, Mr. Morrison argues that Cst. Kelly breached his s. 8 *Charter* rights when he searched Mr. Morrison's vehicle because the search was not incident to a lawful arrest nor did the police have any other legal authority to conduct it.

[62] The Crown argued that it is "trite law" that officers can do a pat down search in this situation and relied on *R. v. Mann*<sup>16</sup> as authority for that proposition.

[63] The Crown argued that Cst. Kelly's search of the vehicle was authorized for three reasons:

---

<sup>13</sup> *R. v. Marges*, 2012 YKTC 102; *R. v. Charles*, 2012 SKCA 34; *R. v. Gray*, 2019 ONCJ 782.

<sup>14</sup> *R. v. Martinbeault*, 2022 QCCA 902.

<sup>15</sup> *R. v. Buakasa*, 2023 ONCA 383.

<sup>16</sup> *R. v. Mann*, 2004 SCC 52.

1. because of a second warrant that he believed was outstanding for Mr. Morrison for a breach of s. 145 of the *Code*;
2. as a result of Mr. Morrison's obstruction of Cst. White that Cst. Kelly had just witnessed; and
3. for officer safety reasons.

***Additional evidence relating to the searches***

[64] During the frisk search, Cst. White found a marijuana grinder in one of Mr. Morrison's pockets. He also located some marijuana residue but could not recall whether the residue was in the grinder or in Mr. Morrison's pocket. Cst. White also located \$1460 in cash in Mr. Morrison's pocket. Cst. White testified that he searched Mr. Morrison to ensure that he did not have anything on him that could harm him or Cst. White and also to determine whether he was carrying anything illegal.

[65] Cst. White testified that he called a towing company to come and deal with Mr. Morrison's car because the doors were locked and the keys were in the vehicle. Cst. White intended for the vehicle to be searched incident to Mr. Morrison's arrest on the obstruct charge combined with the fact that he had found marijuana residue either in Mr. Morrison's pocket or in a grinder in his pocket.

[66] Cst. White agreed, in cross-examination, that Mr. Morrison's arrest on the obstruct was because of his behaviour in refusing to leave the vehicle and that there was nothing that had happened that led Cst. White to believe that there was anything inside the vehicle that police needed to go and look for in relation to that offence. Cst. White agreed that the search of the vehicle had nothing to do with and was not incident to Cst. White's original arrest of Mr. Morrison on the outstanding warrant.

[67] Cst. White also agreed, in cross-examination, that Mr. Morrison was handcuffed and secured in the back seat of his car when the towing company was contacted. There was no urgency with respect to Mr. Morrison or his vehicle. Cst. White said that the towing company was called to get into the vehicle without a key because the key was locked inside the vehicle.

[68] Cst. Kelly is the officer who conducted the search of Mr. Morrison's vehicle. Cst. Kelly testified that he believed that the warrant that Mr. Morrison was wanted on was a Quebec warrant for a charge under s. 145 of the *Criminal Code* which Cst. Kelly described as "a breach."

[69] Cst. Kelly observed as he stood on the passenger side of Mr. Morrison's vehicle, Mr. Morrison inside the vehicle as Cst. White, who was on the driver's side, repeatedly told Mr. Morrison that he was under arrest and needed to step out of the vehicle. Cst. Kelly said that Cst. Clark eventually arrived and went to where Cst. White was. Cst. Clark repeated Cst. White's demands that Mr. Morrison exit the vehicle. Cst. Kelly did not see Mr. Morrison reach

for anything while Mr. Morrison was in the vehicle. Cst. Kelly saw nothing that led him to have any concerns about weapons.

[70] Cst. Kelly said that Mr. Morrison got out of the car at 8:40 p.m. and that he assisted Cst. White in cuffing Mr. Morrison and escorting Mr. Morrison to Cst. White's vehicle. Cst. Kelly observed Cst. White do the frisk search of Mr. Morrison and then went back to Mr. Morrison's vehicle to conduct a search of the vehicle. He said he intended to search the vehicle incident to the arrest Cst. White had just effected.

[71] The doors to the vehicle were locked and the key fob was visible on the floor in front of the driver's seat. The towing company came and opened the door. At 9:13 p.m., Cst. Kelly searched the driver's seat area and located a lighter and the key for the vehicle. He then searched the back passenger seat and located, on the floor, the black leather satchel that contained the gun, ammunition and cocaine. No wallet or identification was found inside the satchel. Cst. Kelly said he searched this area because it was within reach of the driver's seat.

[72] Cst. Kelly said that he could not recall who directed him to search the vehicle. He testified that he "just always [does] that." He said that "it's common law" that police search any area of the vehicle within reach of the driver incident to arrest and the only unusual thing about this situation was that the door was locked and so the towing company was required to come and unlock the door.

[73] Cst. Kelly testified that he was searching the vehicle for evidence, weapons, any means of escape and, for safe-keeping, any valuable items belonging to the driver. He specified that when a person is being taken into custody and their vehicle is being towed, their valuables are taken by police for safe-keeping, for liability purposes.

[74] Cst. Kelly agreed in cross examination that he believed that Mr. Morrison was arrested on the strength of an outstanding "breach" warrant. He did not know what Mr. Morrison was alleged to have breached or how. He agreed that he was searching Mr. Morrison's vehicle for evidence despite knowing nothing about the offence the warrant was outstanding for. Cst. Kelly agreed that the arrest had nothing to do with Mr. Morrison's vehicle and nothing to do with weapons. He said that he was searching the driver's seat and the area within reach of the driver based on his training. He said that he searches the vehicle of any person arrested who has come out of a vehicle. He does this because his training and senior officers taught him to do that.

[75] Cst. Wangkhang assisted Cst. Kelly in his search of the vehicle. She located an empty pill bottle in the centre console of the vehicle with a name other than Mr. Morrison's on the prescription label. She also located a men's wallet in the centre console of the vehicle. Cst. Wangkhang did not recall whether she looked in or pulled anything out of the wallet.

[76] Cst. White later learned that his colleagues searched the vehicle and located a loaded gun and cocaine. At 9:17 p.m., Cst. White arrested Mr. Morrison on the gun and cocaine charges.

### *Analysis*

[77] I have found that Cst. White's arrest of Mr. Morrison on what he believed was an outstanding "tax warrant" out of Quebec was unlawful and breached Mr. Morrison's s. 9 *Charter* rights. As the Crown conceded in argument, if Cst. White's arrest of Mr. Morrison was not a lawful arrest, the obstruct charge fails because Cst. White was not in the lawful execution of his duty when arresting Mr. Morrison.

[78] Given that the arrests fail, the searches of Mr. Morrison and of his vehicle, incident to arrest, also fail because a lawful search cannot take place pursuant to an unlawful arrest.

[79] However, in the event that I am wrong in my findings with respect to s. 9 of the *Charter*, I will consider whether the searches would be lawful if there had been a lawful arrest on the outstanding warrant and whether there was any other basis upon which the police were entitled to conduct the searches.

[80] With respect to the frisk search, in my view, it is clear that had Cst. White effected a lawful arrest, he would have had the authority to conduct a frisk search of Mr. Morrison before placing him in the rear of his police cruiser. He would have had the authority to conduct such a frisk search for officer safety reasons and as a search incident to arrest. I do not intend to engage in any further analysis on this issue because the search of Mr. Morrison's person did not ultimately unearth any evidence of any importance.

[81] The lawfulness of the search of the vehicle is not so clear. In order to withstand scrutiny under s. 8 of the *Charter*, a search must be authorized by law, the law itself must be reasonable, and the search must be carried out in a reasonable manner. A warrantless search, such as the one done of Mr. Morrison's vehicle, is presumed to be unreasonable and the Crown has the burden of showing that it was, on a balance of probabilities, reasonable.<sup>17</sup>

[82] A search incident to arrest must be conducted for a valid objective such as to search for weapons or other things that may be a threat to the safety of the police, the accused or the public, that may facilitate escape or that may act as evidence against the accused. The search is only justifiable if the purpose of the search is related to the purpose of the arrest.<sup>18</sup>

[83] As the Supreme Court of Canada noted in *R. v. Caslake* at para. 19:

...the three main purposes of search incident to arrest are ensuring the safety of the police and public, the protection of evidence from destruction at the hands of the arrestee or others, and the discovery of evidence which can be used at the arrestee's trial. The restriction that the search must be "truly incidental" to the arrest means that the police must be attempting to achieve some valid purpose connected to the arrest. Whether such an objective exists will depend on what the police were looking for and why. There are both subjective and objective aspects to this issue. ...the police must have one of the

<sup>17</sup> *R. v. Caslake*, [1998] 1 SCR 51, paras. 10-11.

<sup>18</sup> *R. v. Caslake*, *supra*, paras. 14-17.



purposes for a valid search incident to arrest in mind when the search is conducted. Further the officer's belief that this purpose will be served by the search must be a reasonable one.

[84] In this case, Cst. Kelly testified that he searched Mr. Morrison's vehicle incident to his arrest on an outstanding warrant for a "breach." Cst. Kelly said that he was exercising a common law power to search the car incident to arrest. He also said that he searches a car anytime someone comes out of it prior to being arrested. He does this because that is, essentially, just how it's done, in his view. This is not consistent with lawful exercise of a police power to search incident to arrest.

[85] Cst. Kelly said that he was searching the vehicle for evidence but he was not able to articulate what evidence he was searching for. Given that Mr. Morrison had been arrested on an outstanding warrant, I fail to see what possible relevant evidence Cst. Kelly could have been searching for. Even considering that he believed that the outstanding warrant was for a breach charge, given that he knew nothing about the breach allegations, again, there was no evidence he could have legitimately been searching for.<sup>19</sup>

[86] Cst. Kelly said that he was searching the vehicle for weapons. He had not seen any weapons nor had he seen Mr. Morrison reach for anything during Mr. Morrison's exchanges with Cst. White. Unlike the situation in *R. v. Buakasa*<sup>20</sup>, Cst. Kelly did not have any reason to be suspicious at the time of the search that Mr. Morrison had a weapon in the vehicle. Most importantly, Mr. Morrison was already secured in handcuffs in Cst. White's cruiser having been patted down by Cst. White before being placed there. Searching for weapons or for a means of escape in Mr. Morrison's car after the point where he was in any position to access such weapons or means of escape supports the conclusion that this was not a legitimate purpose of the search.<sup>21</sup>

[87] Cst. Kelly also said that he could have searched the vehicle looking for Mr. Morrison's valuables for safekeeping though his notes only indicated that he was searching for weapons and evidence. First, if the police were concerned with the safekeeping of Mr. Morrison's valuables after arresting him on an outstanding warrant, perhaps the easiest way to deal with that, and any associated liability issues, would be to leave his belongings locked in his car the way he had left them. Secondly, I don't accept that this was an inventory search for Mr. Morrison's valuables given that the men's wallet that was found by Cst. Wangkhang wasn't even checked to see whether it was Mr. Morrison's or not. There is no evidence about whether it had money or other valuables in it or whether it was seized. There is also no evidence that anything was done with Mr. Morrison's vehicle after the towing company was called to open it. In other words, there is no evidence that it was towed as the vehicle in *R. v. Buakasa* was.

[88] Overall, in my view, the most glaring problem with the search of Mr. Morrison's vehicle is that Cst. Kelly simply didn't know what his authority was for doing the search and the specific

---

<sup>19</sup> *R. v. Santana*, [2020] O.J. No. 2561 (C.A.), para. 28.

<sup>20</sup> *R. v. Buakasa*, 2023 ONCA 383.

<sup>21</sup> *R. v. Santana*, *supra*, para. 31.

purpose for searching this particular vehicle at that location at that time. It was clear from Cst. Kelly's evidence that he doesn't fully understand what the common law authority that allows him to search a vehicle incident to arrest involves and what limitations there are on that power. Cst. Kelly was clearly of the view that it allows the search of the driver's seat of any vehicle that a detained person departs from, and the area within reach of that seat, in any case, regardless of the circumstances and for any purpose. That is not the law.

[89] I find that Cst. Kelly's evidence does not establish, on a balance of probabilities that the search of Mr. Morrison's vehicle was lawful, even if the arrest was lawful.

### **S. 24(2) analysis**

[90] S. 24(2) of the *Charter* provides that where a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by the *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.

[91] Mr. Morrison argued that the evidence of the gun and cocaine located by the police during their search of his vehicle should be excluded because the police breached his s. 8 and s. 9 *Charter* rights by racially profiling him, arbitrarily arresting him and conducting an unlawful search. He argues that admission of the evidence would bring the administration of justice into disrepute.

[92] The Crown argued that, if *Charter* breaches are found, which she submitted should not be the case, the evidence should not be excluded because the police acted in good faith, the breaches were minor, Mr. Morrison had a lowered expectation of privacy in his car and the Crown's case on serious charges would be gutted without this reliable evidence. The Crown argued that the administration of justice would not be brought into disrepute by the admission of the evidence.

[93] The evidence in question, the gun and the cocaine, were clearly obtained as a direct result of the arrest of Mr. Morrison, which I found was in breach of s. 9 of the *Charter* and the subsequent search of his vehicle which I found was in breach of s. 8 of the *Charter*. It is clear that the evidence was obtained in a manner that infringed Mr. Morrison's *Charter* rights.

[94] In *R. v. Grant*<sup>22</sup>, the Supreme Court of Canada provided the following framework for a court to consider when assessing and balancing the effect of admitting the impugned evidence on society's confidence in the justice system. The court shall consider:

1. the seriousness of the *Charter*-infringing state conduct;

---

<sup>22</sup> *R. v. Grant*, [2009] 2 S.C.R. 353.

2. the impact of the breach on the *Charter*-protected interests of the accused; and
3. society's interest in the adjudication of the case on its merits.

[95] I must not look at the *Charter* breaches in isolation. Rather, I must look to the overall conduct of the police investigation and the impact of any *Charter* breach on the investigation as a whole.<sup>23</sup>

### ***The Seriousness of the Charter-infringing state conduct***

[96] I find that the police conduct in this case in breaching Mr. Morrison's right not to be arbitrarily detained and his right not to be subject to unlawful search is conduct that the Court should distance itself from.

[97] I want to be clear that I am not prepared to make a finding that the police intentionally set out to breach Mr. Morrison's *Charter* rights. However, I find that the lack of appropriate steps taken by Cst. White before arresting Mr. Morrison and the lack of knowledge on both his and Cst. Kelly's part about their authority to search incident to arrest take this case to the serious end of the spectrum.

[98] Cst. White did not know what the warrant he arrested Mr. Morrison on was for. He did not even know if it was a warrant for a criminal offence. He simply acted as though it was. That, in my view, is police conduct that cannot be condoned. What Cst. White did know is that the warrant was out of the province of Quebec. It was incumbent on Cst. White, before he interfered with Mr. Morrison's liberty, to know exactly what the warrant was for and whether he had the authority as an officer outside the territorial jurisdiction for the warrant to arrest on the warrant.

[99] Cst. White and Cst. Kelly were both incorrect in their assumptions that simply because Mr. Morrison exited from a vehicle before being arrested, police automatically had the authority to break into and then search his vehicle. That, in my view, is also police conduct that cannot be condoned. Cst. Kelly stated that he searched the vehicle because he was trained to do so and senior officers had told him to do so as part of his practice. Police practices must be based on the lawful exercise of their powers and an individual officer is responsible and indeed expected to know the law and to think about its proper application in each investigation he or she is involved in.

[100] I further note that Cst. Wangkhang seemed to display a similar lack of concern for the reason for the search. She was asked, in cross-examination, who directed her to participate in the search. She said that no other officer instructed her. She, according to her, "jumped in." Cst. Wangkhang was not present for the arrest of Mr. Morrison. There is no evidence that she received any information about the reason for the search of the vehicle from any other officer on scene. I am not suggesting that, strictly speaking, Cst. Wangkhang needed to have her own

---

<sup>23</sup> *R. v. Santana*, *supra*, para. 46.

grounds to search the vehicle in order to assist with the search. But I do find that her willingness to simply start searching someone's vehicle simply because another officer was already doing so demonstrates a pattern of indifference or a lack of concern about whether Mr. Morrison's *Charter* rights were being respected.

[101] Police are given wide powers within which to exercise their law enforcement duties. They need to know the lawful basis for what they are doing whenever they interfere with the liberty of a member of the public and they need to be able to clearly articulate and defend the basis for their decisions later.

[102] I find that what I see as a cumulative effect of both breaches together gives an overall picture of a lack of understanding of and respect for Mr. Morrison's *Charter* rights that puts the police conduct more towards the serious end of the spectrum. This favours exclusion of the evidence.

### ***The impact of the breaches on Mr. Morrison's Charter-protected interests***

[103] It is difficult to imagine a more impactful intrusion on one's liberty interests than being arrested by the police. Accordingly, I find the s. 9 breach had an obviously significant impact on Mr. Morrison's *Charter*-protected interests.

[104] In *R. v. Grant*, the Supreme Court held that an "unreasonable search contrary to s. 8 of the *Charter* may impact on the protected interests of privacy, and more broadly, human dignity. An unreasonable search that intrudes on an area in which the individual reasonably enjoys a high expectation of privacy, or that demeans his or her dignity, is more serious than one that does not."

[105] The breach of s. 8 involved a search of Mr. Morrison's car. There is a reduced expectation of privacy in one's vehicle as compared to, for example, one's home or computer or cell phone. However, in this case, I find that the fact that the police took additional steps to break into Mr. Morrison's locked car to conduct the unlawful search made the intrusion into his protected interests more serious than, for example, merely doing a visual scan of the interior of the vehicle to look at its contents or doing a search of areas of the interior of an unlocked car.

[106] The combined impact of the significant intrusion on Mr. Morrison's liberty interests from his unlawful arrest with the less significant but still important intrusion on his privacy interests from the unlawful search of his vehicle favour the exclusion of the evidence.

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

[107] Society's interest in the adjudication of criminal cases involving guns and illegal drugs, is undoubtedly high. The dangers associated with guns and drugs are well publicized in both the media and in the caselaw.

[108] I must consider the reliability of the evidence, its importance to the prosecution's case and the seriousness of the offence at issue.<sup>24</sup>

[109] The loaded handgun and the cocaine found in Mr. Morrison's car are undeniably reliable evidence. The evidence is critical to the Crown's case. Without it, there is no case. The offences are undeniably serious.

[110] These factors weigh against the exclusion of the evidence.

### **Conclusion regarding *Charter* applications**

[111] I must balance the three parts of the analysis to reach the goal which is not to punish the police for their errors but to "address systemic concerns involving the broad impact of admitting the evidence on the long-term reputé of the justice system."<sup>25</sup>

[112] The first two lines of inquiry, regarding the seriousness of the state conduct and the impact on Mr. Morrison's *Charter*-protected interests point strongly towards exclusion of the evidence while the third line of inquiry points away from exclusion.

[113] In my view, to admit the evidence of the gun and the cocaine, in the face of such clear breaches by the police, on more than one front, of Mr. Morrison's most fundamental *Charter* rights would bring the administration of justice into disrepute. In the long term, or in the overall picture, in order for the public to know that their justice system is functioning properly, they must know that the police are educated about the proper exercise of their authority and that the police will be able to clearly articulate the basis for their exercise of authority. The public must be confident that serious cases will be prosecuted but it must be done on the basis of evidence that has been properly obtained. Evidence gathered through such clear and combined misuses of police power is not evidence upon which, the foundation for a meritorious prosecution can be built.

[114] On a balance of probabilities, I find that the evidence of the gun and cocaine found in the satchel in Mr. Morrison's vehicle should be excluded.

### **Evidence of possession on the trial proper**

[115] In the event I am incorrect in my findings on the *Charter* applications, I will address the remaining argument on the trial proper.

---

<sup>24</sup> *R. v. Beaver*, 2022 SCC 54, at para. 129.

<sup>25</sup> *R. v. Beaver*, *supra*, at para. 133.

[116] Mr. Morrison argued that even if the evidence of the gun and cocaine found in the leather satchel in the rear passenger footwell of his vehicle is admissible, the Crown has not proven, beyond a reasonable doubt, that he possessed those items because it has not proven that he had knowledge and control over them.

[117] The Crown argued that Mr. Morrison's knowledge of the gun and cocaine in the satchel is proved through the following evidence:

1. A used marijuana grinder was found on Mr. Morrison during the frisk search as was some marijuana residue. A baggie of marijuana was found in the leather satchel with the gun and the cocaine. The Crown argued that this demonstrated a link between Mr. Morrison and the contents of the leather satchel because there was marijuana on him and in the satchel.
2. Mr. Morrison is the registered owner of the vehicle.
3. Mr. Morrison was the lone occupant of the vehicle on this occasion.
4. The satchel was located in the rear passenger seat footwell, in plain view, within reach of the driver.
5. Mr. Morrison's behaviour in obstructing the officers by not leaving the vehicle and by locking the doors with the keys inside. In other words, Mr. Morrison acted as though there was something to hide in the car, demonstrating knowledge and control over the gun and drugs, and the importance of keeping their whereabouts from the police.

### *Analysis*

[118] The Crown's case on the issue of Mr. Morrison's knowledge and control of the gun and cocaine is a circumstantial case. In order to conclude that Mr. Morrison had knowledge and control of these items, I must conclude that it is the only reasonable inference to be drawn from the evidence. I have to consider other possible theories that may be inconsistent with his having knowledge or control of these items. But these other possible theories must arise from the evidence or lack of evidence. The Crown need not negative every speculative suggestion.<sup>26</sup>

[119] I do not find that the marijuana grinder and marijuana residue on Mr. Morrison provide any link to knowledge and control over the items in the satchel in the back of the car. Marijuana is now legal in Canada and many people carry it and, in fact, use it in public. I find it of no more assistance than I would if Mr. Morrison was found to have had cigarettes on his person

---

<sup>26</sup> *R. v. Villaroman*, 2016 SCC 33 at para. 37.

and there were cigarettes found in the satchel. This is a generic piece of evidence. There is no evidence before me that the marijuana on Mr. Morrison was even the same type of marijuana that was found in the satchel.

[120] The fact that Mr. Morrison is the registered owner and was the lone occupant of the vehicle is the strongest evidence pointing to him having knowledge of and control over the items in the satchel on the floor in the back seat. However, that is not enough. He may not have been the only person to use that vehicle. Simply because one is the registered owner of a vehicle and the one currently using it does not mean that one knows, at any given moment, what another driver of the vehicle or any passenger of the vehicle has left in the vehicle at any point prior. The driver and registered owner of the vehicle would have no idea what anyone else had put in the glove compartment, side door pockets, or under the seats unless he had seen the person put it there or looked in the area and seen it there.

[121] It is not clear that the satchel was in plain view. Cst. White and Cst. Kelly were both standing outside the vehicle, at the sides, looking in, for approximately nine minutes while Cst. White attempted to get Mr. Morrison to leave the vehicle. Neither one of them testified to seeing a black leather satchel in the rear passenger footwell. If neither one of them saw it from their vantage point outside of the car, standing up, looking in, it cannot be assumed that Mr. Morrison would have seen it from the driver's seat of the vehicle.

[122] Mr. Morrison's behaviour in refusing to exit the vehicle and in locking the keys in the car may have been in order to thwart the police in searching the car because he knew the gun and cocaine was there. However, there are other theories that are also consistent with the evidence. Cst. White testified that Mr. Morrison attempted to tell him that the warrant was not valid and that he said this before refusing to get out of the car. So, it is possible that Mr. Morrison was refusing to comply with what he believed was an unlawful arrest. There is also no evidence as to how the doors of Mr. Morrison's vehicle came to be locked and how the key ended up on the floor of the driver's seat. There is no evidence that it was in fact Mr. Morrison who locked the door or that he did so using the fob or that he did so intentionally. Whomever locked the door may have done so by accident. There were at least five officers on the scene by the time Cst. White arrested Mr. Morrison and they were all there to lend assistance. It is possible that one of them closed the door to the car when the locks had already been activated. While some of this may be speculation, the fact is that there is no evidence that it was Mr. Morrison who locked the car doors and/or left the key inside.

[123] Consistent with my obligation to consider other theories available on the circumstantial evidence that has been presented, I must consider the fact that there was a prescription pill bottle in the centre console of the vehicle with another person's name on the prescription label which was from a pharmacy in Morrisburg. This is possible evidence that someone else, namely the person named on the pill bottle, was a passenger in or driver of the vehicle at some prior time.

[124] Further, Cst. Wangkhang located a male's wallet in the centre console, where the pill bottle was but there is no evidence as to whether there was identification in the wallet and, if so, whose. If it was Mr. Morrison's wallet, with his identification in it, I would have to consider the significance of his wallet being in the console of the vehicle as opposed to in the satchel

with items the Crown argued are in his possession. If there was identification in the wallet belonging to someone else, that would be further evidence that another person may have driven or been a passenger in the vehicle. Because Cst. Wangkhang did not look at or did not note the contents of the wallet, there is no evidence on this point.

[125] At the end of the analysis, all that I can conclude is that Mr. Morrison is the registered owner and was, at the time of the search, the lone occupant of the vehicle. I do not find that the evidence establishes that the satchel was in plain sight. This evidence is not sufficient to prove, beyond a reasonable doubt, that Mr. Morrison was in possession of the gun and cocaine in the leather satchel.

### **Conclusion**

[126] Mr. Morrison will be found not guilty on all counts.

---

Justice L. Bramwell

**Released:** March 28, 2024



**CITATION:** R. v. Morrison, 2024 ONSC 1803  
**COURT FILE NO.:** CR 21-107  
**DATE:** 2024/03/28

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**HIS MAJESTY THE KING**  
**– and –**  
**CURTIS MORRISON**

---

**REASONS FOR DECISION**

---

The Honourable Justice Lia Bramwell

**Released: March 28, 2024**