SUPREME COURT OF NOVA SCOTIA
Citation: *R v Corporong*, 2026 NSSC 131

Date: 20260426
Docket: *Yar*, No. 525782
Registry: Yarmouth

Between:

His Majesty the King

v.

Anthony Earl Corporong

Judge: The Honourable Justice Muise

Heard: November 4, 5 and 6, 2025 and January 31, 2026, in Yarmouth, Nova Scotia

Counsel: Melanie Perry, for the Applicant
David Hirtle KC, for the Defendant

By the Court:

APPLICATIONS RE VOLUNTARINESS OF ACCUSED'S STATEMENT AND ALLEGED *CHARTER* BREACHES RELATED TO SEARCH AND SEIZURE

INTRODUCTION

[1] On July 8, 2022, Anthony Corporong called 911 asking that the police come and pick him up as he was a pedophile and, if they did not come, his friend Mike would kill him because he was a pedophile.

[2] Prior to attending, the police spoke with him on the phone and asked what made him call 911. He said he had child pornography on his tablet. Once in the apartment where they found him, they, among other things, had him enter his passcode to open his tablet and looked quickly in the photo gallery. They immediately saw obvious child pornography images, seized the device and arrested him.

[3] They brought him to the detachment where he was lodged for the night and interviewed the next day.

[4] His cell phone was later seized, without a warrant, from the same apartment, where his friend "Mike", who was the tenant of the apartment, handed it over to the police at their request.

[5] He was charged with possessing child pornography and breaching a s. 161 order by using the internet or a digital network.

[6] A digital forensic analyst analyzed the tablet and the Micro-SD card in it. He found child pornography outside the date range specified in the warrant to search its contents. He did not share the images with the investigation team. However, he advised them there was child pornography outside the date range. A new warrant was obtained with no date range. The analyst then provided the investigators with the child pornography images under the authorization of the new warrant.

[7] The Crown applied for a determination that his formal statement, as well as his utterances before and after that statement are voluntary and admissible. The Defence did not concede those points but did not advance any argument to contest them.

[8] The Defence applied for a declaration that the police committed multiple breaches of Mr. Corporong's fundamental rights under the Canadian *Charter of Rights and Freedoms* and for an order excluding the tablet, information retrieved from it, a cell phone, other electronic devices, and utterances made by Mr. Corporong: while the police were on their way to the residence; prior to his arrest at the apartment; and, after he was charged, when a police officer attended his residence. The Crown concedes a s. 8 breach, arising from the viewing of the tablet at the scene, but submits no s. 24(2) exclusion is warranted in the circumstances.

ISSUES

1. Was there a s. 10(b) *Charter* breach when the police questioned Mr. Corporong over the phone, prior to their arrival?
2. Was there a s. 10(b) *Charter* breach arising from Mr. Corporong being detained on police arrival, prior to arrest?
3. Was there a s. 8 *Charter* breach when Mr. Corporong's tablet was seized and searched prior to arrest, or did Mr. Corporong give valid consent?
4. Was there a s. 9 *Charter* breach when Mr. Corporong was arrested without a warrant, including whether the police had sufficient grounds to arrest him without the fruits of the unlawful search, if the search prior to arrest was unlawful?
5. Was there a s. 8 *Charter* breach when Mr. Corporong's cellphone was seized from Michael Marchand's residence without a warrant?
6. Was the warrant issued on the ITO which authorized the initial search of the electronic device contents valid, including whether it contained sufficient information without the fruits of the search prior to arrest should it be found to have been unlawful, and including whether it contained sufficient information without the statements made by Mr. Corporong prior to and following his arrest, should they be found to have been obtained in breach of Mr. Corporong's *Charter* rights?
7. Did the forensic digital analyst reviewing child pornography outside the date range on the initial search warrant for the tablet and MicroSD card amount to a warrantless search and a breach of Mr. Corporong's s. 8 *Charter* rights, and, if so, did the ITO for the new search warrant, with no date range, contain sufficient information

without the reference to child pornography existing outside the initial date range to justify granting the new search warrant?

8. Should any evidence be excluded as a remedy under s. 24(2)?
9. Has the Crown proven the voluntariness of Mr. Corporong's cautioned statement and utterances beyond a reasonable doubt?

ANALYSIS

PRELIMINARY COMMENTS RE CREDIBILITY AND RELIABILITY OF RESPONDING OFFICERS

[9] The Defence challenged the credibility and reliability of the evidence of the officers who made first contact with Mr. Corporong, largely based on inconsistencies with the information available to them on the Computer Aided Dispatch ("CAD") system while they were responding, inconsistencies between their respective descriptions of what they observed, and that some of their evidence was not reflected in their notes.

[10] Cst. Gougeon and Cst. Wavrychuk were stationed at the Yarmouth Rural Detachment of the RCMP and were the two members on duty on the night in question. The 911 call came from an address that was within the area for which the Yarmouth Town Detachment was responsible. However, the Town Detachment members were unable to respond. As the call had been dispatched over the radio, it was also heard by the Yarmouth Rural members as well as the Meteghan Detachment members. Following some discussion regarding who would respond, they said that they would.

[11] Cst. Wavrychuk explained that the Yarmouth Town Detachment members on duty were tied up dealing with a violent patient at the hospital.

[12] The CAD ticket generated by the Telecommunications Centre following the 911 call is available to them when they are responding. However, as response to a 911 call generally must be expeditious, they usually only look at the first two pages which contains "tombstone" information, as well as the timing of the call, dispatch and ultimately the arrival at the scene. There is generally some police record information conveyed over the police radio on the way to the call. In this case, Cst. Gougeon, prior to his arrival at the apartment where Mr. Corporong was located, did not view anything from CAD on his screen other than what was on the first two pages. He did not recall whether anything additional was conveyed over the radio.

In addition, it was only a short distance, so such information may have been received afterwards. Cst. Wavrychuk specified it was only a two-to-three-minute drive.

[13] In this particular case the printout of the CAD ticket was 16 pages long. Pages 3 to 16 contained mostly language coding for dispatch. It is in those pages that information regarding some of Mr. Corporong's criminal convictions was contained.

[14] Cst. Gougeon testified that he would typically check PROS and CPIC when responding to a 911 call. Cst. Wavrychuk testified he typically does not look at CAD to query an individual. He was not sure whether he had in relation to Mr. Corporong. Inquiries made in the course of these proceeding with the Operational Communications Centre revealed that they both viewed the Occurrence Tab and the Person Tab in PROS shortly before attending the scene. That is consistent with what they said they would usually or typically do.

[15] Cst. Wavrychuk testified that he was sick and not "on his game" that night, so he let Cst. Gougeon take the lead and did not take detailed notes.

[16] The Defence argued that, if Cst. Gougeon and Cst. Wavrychuk were unsure, they ought to have said they did not recall, and there was not much of that in their evidence. I respectfully disagree with that characterization of their evidence. They readily, on numerous occasions, acknowledged that they did not recall various points raised in questioning.

[17] There was some inconsistency on collateral details. For example, Cst. Gougeon did not recall there being another male in the apartment in addition to Michael Marchand, who was the tenant, and Mr. Corporong. Cst. Wavrychuk recalled a third male, but he did not know who he was. Mr. Marchand testified that the third male was his son, David Pothier. Cst. Gougeon testified that he had spoken with David Pothier outside and he was the one who directed them up to Mr. Marchand's apartment. Therefore, Mr. Pothier would have entered after Cst. Gougeon and the evidence was that Cst. Wavrychuk also entered after Cst. Gougeon. Further, Cst. Gougeon is the one who interacted with Mr. Corporong, arrested him and transported him. Those points would reasonably explain why Cst. Wavrychuk would have noticed Mr. Pothier, but Cst. Gougeon would not have.

[18] However, the evidence of Cst. Wavrychuk was consistent with that of Cst. Gougeon on the core elements of the interactions with Mr. Corporong related to

the circumstances of him being spoken to at the apartment, turning over his tablet, as well as being arrested, cautioned, chartered, transported, processed and lodged in cells, including him declining a lawyer at the scene.

[19] In addition, given the unusual nature of the call and the fact they were handling it for another detachment, the event would reasonably have been expected to stand out in their minds. So, the paucity of notes only minimally impacts the reliability of their evidence.

[20] The points which might raise credibility or reliability concerns have been satisfactorily explained. There were no other credibility or reliability concerns regarding their evidence and I accept their evidence except that, on the collateral points, where there was inconsistency in their evidence, I accept the evidence of the officer with the most direct view or knowledge of the points testified to.

ISSUE 1: WAS THERE A S. 10(B) *CHARTER* BREACH WHEN THE POLICE QUESTIONED MR. CORPORONG OVER THE PHONE, PRIOR TO THEIR ARRIVAL?

[21] S. 10(b) of the *Canadian Charter of Rights and Freedoms* provides that "[e]veryone has the right on arrest or detention to retain and instruct counsel without delay and to be informed of that right".

[22] Mr. Corporong bears the onus of establishing, on a balance of probabilities, that he was either arrested or detained.

[23] He did not testify.

[24] There was no evidence indicating that:

- during the call the officer told him he was under arrest or said anything to him he could reasonably have understood as communicating he was under arrest; or
- he reasonably believed he had no choice but to stay where he was, considering his characteristics or circumstances, including the impact of being subject to the effects of magic mushrooms, a factor Michael Marchand testified to.

[25] Mr. Corporong stated, to the officer who called him following the 911 call, Cst. Gougeon, before driving to where he was located: that he wanted to be

arrested, and that he had child pornography on his tablet, expressly stating “come arrest me”. Then, when the officer tried to get more details, he shut down the conversation.

[26] His request that the officer come and arrest him shows he did not view himself as under arrest at the time. His shutting down the conversation shows he did not feel he had to comply with any requests by Cst. Gougeon. There is no evidence Cst. Gougeon told him to stay put and that he would be there shortly, nor anything else that could be interpreted as a direction to remain in place.

[27] Cst. Gougeon could not exercise physical control over Mr. Corporong’s movement as neither he, nor any other officer, was physically in Mr. Corporong’s presence.

[28] For these reasons, I agree with the Crown that Mr. Corporong has not established he was arrested or detained, and, as such no right to counsel arose.

ISSUE 2: WAS THERE A S. 10(B) *CHARTER* BREACH ARISING FROM MR. CORPORONG BEING DETAINED ON POLICE ARRIVAL, PRIOR TO ARREST?

[29] Cst. Gougeon’s testimony, supported by that of Cst. Wavrychuk, included that which follows.

[30] After taking on the task of responding to the 911 call in which Mr. Corporong had stated he was a pedophile and needed the police to come and arrest him, he managed to make telephone contact with Mr. Corporong. During that call, Mr. Corporong sounded intoxicated. Cst. Gougeon asked what made him call. He answered that he had a tablet with a full library of child pornography on it, and to come and arrest him.

[31] He and Cst. Wavrychuk, in separate police vehicles, attended at the address they had been provided through the Telecommunication Centre. There, they were directed to the upstairs apartment and knocked at the door. The tenant, Michael Marchand, answered the door. They explained to him that they were police and had attended in response to the call in question from Mr. Corporong. Mr. Marchand pointed behind himself, communicating that he was right in the apartment. So, they went in.

[32] Mr. Corporong was sitting in a chair. They addressed him and said it was the police. He turned around.

[33] Cst. Wavrychuk testified that Mr. Corporong, who was smoking what appeared to be a marijuana cigarette, identified himself as being Anthony Corporong and continued to smoke that “joint” for a period of time.

[34] Cst. Gougeon confirmed he suspected and was investigating the potential that Mr. Corporong did have child pornography on his tablet.

[35] Cst. Gougeon told Mr. Corporong he had referred to having child pornography on his tablet. He answered that he did have child pornography.

[36] Then, Cst. Gougeon cautioned him that anything that he said could be used as evidence against him. Cst. Wavrychuk confirmed that Cst. Gougeon gave that caution.

[37] Cst. Gougeon asked where the tablet was. He pointed to the tablet on the coffee table next to him.

[38] Cst. Wavrychuk confirmed that Mr. Corporong had said he did have child pornography and that his tablet was “over there”. He also testified that Mr. Corporong said to take the tablet, without Cst. Gougeon asking for it.

[39] Mr. Corporong handed over the tablet to Cst. Gougeon, both reaching towards each other at the same time.

[40] They had a discussion about the device and Cst. Gougeon asked him to unlock it. He did and turned it back towards Cst. Gougeon.

[41] The police did not tell Mr. Corporong he did not have to hand over his tablet or that he could refuse.

[42] Cst. Gougeon clicked on the gallery icon that was on the desktop. As soon as he did, he immediately saw images that clearly constituted child pornography. At that point, he closed the tablet and handed it to Cst, Wavrychuk. Cst Wavrychuk confirmed he took possession of it and hung on to it until he arrived at the detachment and gave it back to Cst. Gougeon.

[43] During all this time, Mr. Coporong was smoking marijuana.

[44] Then, Cst. Gougeon immediately placed Mr. Corporong under arrest, including by placing handcuffs on him, told him it was for possession of child pornography and read him the police caution and his rights verbatim from a *Charter* card. He did not wish to speak to a lawyer. He was transported to the Yarmouth Town Detachment of the RCMP.

[45] Prior to that point, they had not restrained Mr. Corporong, nor touched him at all, in any way.

[46] Cst. Wavrychuk confirmed they did not detain Mr. Corporong, nor tell him to stop or to not go anywhere, but that, if he did get up and leave they would have asked where he was going because of the information regarding possession of child pornography and the threats of harm as he could also have been the person threatening, particularly considering he did not appear threatened when they got there.

[47] Cst. Gougeon was asked why he did not simply arrest Mr. Corporong on arrival and obtain a search warrant for the tablet, given that he had stated during the call that he had child pornography on it. Cst. Gougeon explained that it is unusual for someone to call on themselves and that, if they do, for the most part, it is due to a mental health issue. In addition, he was intoxicated. Therefore, even though Mr. Corporong's statement that he had child pornography on his tablet was in his mind, Cst. Gougeon was thinking it may simply be a comment arising from a mental health issue or intoxication. Further, even if there had been a criminal offence it may have been a better option to bring him to mental health. Therefore, he was considering other options.

[48] On cross-examination, he explained that he had called Mr. Corporong to verify the information and to check on him due to the unusual nature of the call. He was trying to confirm what was going on, because the self-report seemed irrational, so he was thinking it could be a mental health issue or due to intoxication. So, he wanted to do a cursory search of the tablet to confirm whether it was true or not that there was child pornography on it, i.e. to determine whether it was a frivolous call. He also wanted to confirm that he was actually the person who the caller had said he was.

[49] In addition, the CAD ticket generated by the Telecommunications Centre following the 911 call had indicated that his friend would kill him. So, Cst. Gougeon was also calling to check whether he was safe and whether everything was okay.

[50] He acknowledged that he was considering the possibility that it could be a legitimate Criminal Code investigation, that he did not tell Mr. Corporong that he wanted to look at the tablet to determine whether a criminal offence had taken place, nor that he would be charged if child pornography was found on it.

[51] He confirmed that, until Mr. Corporong was arrested, he was free to leave, but, if he had attempted to leave, he would have been detained for investigation.

[52] Both officers agreed that, given the small size of the apartment and its layout, they necessarily would have been between Mr. Corporong and the door through which they entered. They did not know whether there was another door to the outside. Mr. Marchand testified there was not.

[53] For reasons already outlined, I accept this evidence from Cst. Gougeon and Cst. Wavrychuk.

[54] Mr. Marchand's evidence included the following:

- There was no fire exit in the apartment.
- The apartment was small.
- Anyone who came in would be between Mr. Corporong and the door. Just by happenstance, because of the layout of the apartment.
- He let the police in.
- They asked if Mr. Corporong was there. He confirmed that he was.
- They asked Mr. Corporong for his tablet.
- They went over and were scrolling through it.
- They did not say anything about arresting him.
- He did not hear them read him his rights.
- They just put cuffs on him.

[55] Points which raised reliability concerns regarding his evidence included:

- He had been consuming marijuana and psychedelic or magic mushroom bars. It was kind of scary (expressed with a laugh).
- Because of the psychedelics he was not sure what was unfolding.

- It is hard to explain where his mind was.
- That night was a little foggy.
- It gets foggier over time.
- He did not remember how everything went down.
- His memory was better on July 8, 2022, when he spoke to the police, than on January 31, 2026, when he testified at trial.
- He had told the officers on July 8, 2022, that Mr. Corporong had consumed 1.5 mushroom bars, not two. His explanation for that inconsistency did not make sense. He said he did not realize until after that that he had not consumed as much as he did.
- He said that Mr. Corporong thought he was going to kill him because he could see the fear in Mr. Corporong's eyes.

[56] Points which raised credibility concerns regarding his evidence included:

- He hesitated for a long time before answering questions about his criminal record and did not want to do so.
- He initially evaded acknowledging that Mr. Corporong had told him he had child pornography on his tablet by saying he did not remember. When a part of his statement to the police declaring that Mr. Corporong had said that was read to him, he only acknowledged that it sounded like what he said, but things were foggy. However, another part of that statement was read to him. In that other part, he had told the police that Mr. Corporong had told him he had child pornography on his tablet and he did not know what to think. He immediately commented: "yeah, I thought he was just trying to get my goat". That comment was at least partly consistent with a later comment in his statement to the police that he thought Mr. Corporong was just messing with him. So, he did remember.
- His evidence at trial that he did not hear the police read Mr. Corporong his rights is inconsistent with his statement to the police that, when they were reading him his rights, he was not in a position to understand what was being said to him.

[57] Given these credibility and reliability concerns, to the extent that Mr. Marchand's evidence is inconsistent with that of Cst. Gougeon and Cst. Waverchuk, I reject it and accept that of the officers.

[58] The Defence submits that Mr. Corporong was at least psychologically detained immediately upon the arrival of the police and ought to have been afforded his rights to counsel. The Crown submits there was no detention. They both base their positions on the factors outlined in the meaning of "detention" summarized in *R. v. Grant*, 2009 SCC 32, at paragraph 44, as follows:

> 1. Detention under ss. 9 and 10 of the Charter refers to a suspension of the individual's liberty interest by a significant physical or psychological restraint. Psychological detention is established either where the individual has a legal obligation to comply with the restrictive request or demand, or a reasonable person would conclude by reason of the state conduct that he or she had no choice but to comply.
>
> 2. In cases where there is no physical restraint or legal obligation, it may not be clear whether a person has been detained. To determine whether the reasonable person in the individual's circumstances would conclude that he or she had been deprived by the state of the liberty of choice, the court may consider, inter alia, the following factors:
>
> > (a) The circumstances giving rise to the encounter as they would reasonably be perceived by the individual: whether the police were providing general assistance; maintaining general order; making general inquiries regarding a particular occurrence; or, singling out the individual for focussed investigation.
> > (b) The nature of the police conduct, including the language used; the use of physical contact; the place where the interaction occurred; the presence of others; and the duration of the encounter.
> > (c) The particular characteristics or circumstances of the individual where relevant, including age; physical stature; minority status; level of sophistication.

[59] In the case at hand, there was no evidence of physical restraint, nor of any restrictive request or demand to give rise to a legal obligation to comply. The placement of the officers between Mr. Corporong and the door was simply a product of the size and layout of the apartment. Anyone entering would have been in the same position. So, the question is whether "a reasonable person would conclude by reason of the state conduct that he or she had no choice but to comply".

[60] The Defence has emphasized the evidence that, even prior to entering the apartment, the police subjectively had grounds to arrest Mr. Corporong because he

had already said he was in possession of child pornography. However, as noted at paragraph 48 of *R v Clayton*, 2007 SCC 32, "[i]t is not until that subjective intent is accompanied by actual conduct that it becomes relevant" to a determination of unconstitutionality. So, the focus is instead on what a reasonable person in Mr. Corporong's circumstances would conclude.

[61] Though some level of perceptive distortion may have arisen due to being under the influence of psychedelics, Mr. Corporong's clear ability to be properly responsive to comments and questions shows his perception was not distorted to the extent that he would perceive the circumstances as amounting to detention if they reasonably did not. Further, even under the modified objective standard approach, such a self-induced perceptive distortion would not render an otherwise unreasonable perception of detention, reasonable.

[62] Mr. Corporong was 37 years of age. The videorecording of his police interview reveals him to be of at least average intelligence and sophistication. There was no evidence that he had minority status.

[63] He is described in the CAD Report as being 6 ft 2 ins and weighing 199 lbs. So, he is of relatively large stature.

[64] He has a criminal record and has served prison sentences. That suggests some level of knowledge of the workings of law enforcement and the justice system. However, there was no evidence regarding the impact that knowledge may have had on his perception of whether he was detained.

[65] Mr. Corporong is the one who reported on himself and asked the police to come get him as his friend wanted to kill him. So, until the police verified the complaint, he was more of a complainant than a suspect. In that sense, the police were more in the process of making inquiries about an alleged occurrence, than singling out Mr. Corporong for focussed investigation.

[66] Priror to the arrest, there was no language of restraint, nor any physical contact apart from the indirect contact when Mr. Corporong passed his tablet to Cst. Gougeon. The interaction took place in the apartment where Mr. Corporong had been socializing and consuming drugs with his friend and his friend's son. They were both still present and Mr. Corporong was seated in a recliner type chair still smoking a marijuana cigarette, initially with his back towards the officers.

[67] The officers had been invited in by Mr. Marchand. Cst. Gougeon referred to Mr. Corporong's self-report and Mr. Corporong repeated that he had the child pornography, pointing to where the tablet was, and handed it to Cst. Gougeon, in what could be described as a nonchalant fashion. The subsequent request by Cst. Gougeon to unlock the tablet would reasonably have been interpreted by a reasonable person in Mr. Corporong's position as being to verify his self-report.

[68] The encounter prior to the arrest was brief, less than 10 minutes.

[69] Considering these factors, I agree with the Crown that the Defence has not established that Mr. Corporong was detained, psychologically or otherwise, prior to being placed under arrest. Therefore, there was no detention to give rise to a s. 10(b) right.

ISSUE 3: WAS THERE A S. 8 *CHARTER* BREACH WHEN MR. CORPORONG'S TABLET WAS SEIZED AND SEARCHED PRIOR TO ARREST, OR DID MR. CORPORONG GIVE VALID CONSENT?

[70] S. 8 of the *Charter* provides that: "Everyone has the right to be secure against unreasonable search or seizure."

[71] Cst. Wavrychuk testified that Mr. Corporong, when Cst. Gougeon noted the subject of his self-report, said he did have child pornography, his tablet was "over there" and to take the tablet, indicating he voluntarily turned over the tablet. However, Cst. Gougeon, when he asked Mr. Corporong to unlock it, did not inform him that he had a right to refuse. Therefore, I agree with the Defence that any consent Mr. Corporong gave to viewing the tablet contents at that moment was invalid as it was not informed. Consequently, the Crown appropriately conceded that there was a s. 8 *Charter* breach, and I will address later whether it warrants exclusion of the contents of the tablet under s. 24(2).

ISSUE 4: WAS THERE A S. 9 *CHARTER* BREACH WHEN MR. CORPORONG WAS ARRESTED WITHOUT A WARRANT, INCLUDING WHETHER THE POLICE HAD SUFFICIENT GROUNDS TO ARREST HIM WITHOUT THE FRUITS OF THE UNLAWFUL SEARCH, IF THE SEARCH PRIOR TO ARREST WAS UNLAWFUL?

[72] S. 9 of the *Charter* provides that: "Everyone has the right not to be arbitrarily detained or imprisoned."

[73] Cst. Gougeon testified the grounds for arrest were a combination of the initial dispatch ticket information, the information Mr. Corporong provided during the telephone conversation preceding attendance at the scene and confirmation of the information upon seeing the images on the tablet. However, he also said that he had already formulated sufficient grounds on his arrival, without seeing the images.

[74] He explained he did not immediately arrest Mr. Corporong because he was still thinking the self-report could be due to a mental health issue or intoxication as he had never had anyone call on themselves before.

[75] Mr. Corporong's self-report that he was a pedophile and his statement during the telephone conversation with Cst. Gougeon that he had a library full of child pornography on his tablet would objectively provide reasonable and probable grounds to arrest Mr. Corporong for possession of child pornography. Cst. Gougeon also testified, and I accept, that he personally believed that information provided him reasonable and probable grounds to effect such an arrest.

[76] Cst. Gougeon proceeding to take the extra measure of verifying the information by viewing the images on the tablet, to rule out the possibility that the self-report might emanate from a mental health issue or intoxication and be false, does not negate the prior existence of grounds to arrest.

[77] I, therefore, agree with the Crown that it has shown that the requirements for a valid warrantless arrest outlined in *R. v. Storrey*, [1990] 1 S.C.R. 241, existed prior to and at the time of the arrest.

[78] Consequently, his arrest did not violate Mr. Corporong's rights under s. 9 of the *Charter*.

ISSUE 5: WAS THERE A S. 8 *CHARTER* BREACH WHEN MR. CORPORONG'S CELLPHONE WAS SEIZED FROM MICHAEL MARCHAND'S RESIDENCE WITHOUT A WARRANT?

[79] The Crown is not seeking to rely on anything that was on Mr. Corporong's cell phone. Therefore, it is of no consequence to the Crown's case whether it is

excluded or not, and of little or no relevance to the *Charter* issues raised by the Defence globally.

[80] I highlight that it was only noted by the Defence as being a "technical breach". It pointed out that, within a couple of days of the arrest, Cst. Lamont Bourque went to Mr. Marchand's apartment and asked for Mr. Corporong's phone. Mr. Marchand testified that he hesitated and was told by the police that, if he did not turn it over, they would get a warrant and tear his apartment apart, so he turned the phone over to Cst. Bourque. He added that he probably would have handed it over anyway. Given the reliability concerns with his evidence, it is unclear whether the police actually said that they would tear his apartment apart or whether that was his own idea what would happen if they had to return there with the warrant.

[81] Either way, as noted by the Crown, the police were prepared to leave and obtain a warrant. In addition, they did obtain judicial authorization to examine the contents of the phone. Further, they would have been authorized to seize the phone without a warrant during the arrest of Mr. Corporong.

[82] For these reasons, I agree with the Defence and the Crown that, if there was a breach, it was merely a technical one, which, in the circumstances, would clearly not justify excluding the phone under s. 24(2) if the Crown had sought to use it in evidence.

ISSUE 6: WAS THE WARRANT ISSUED ON THE ITO WHICH AUTHORIZED THE INITIAL SEARCH OF THE ELECTRONIC DEVICE CONTENTS VALID, INCLUDING WHETHER IT CONTAINED SUFFICIENT INFORMATION WITHOUT THE FRUITS OF THE SEARCH PRIOR TO ARREST SHOULD IT BE FOUND TO HAVE BEEN UNLAWFUL, AND INCLUDING WHETHER IT CONTAINED SUFFICIENT INFORMATION WITHOUT THE STATEMENTS MADE BY MR. CORPORONG PRIOR TO AND FOLLOWING HIS ARREST, SHOULD THEY BE FOUND TO HAVE BEEN OBTAINED IN BREACH OF MR. CORPORONG'S *CHARTER* RIGHTS?

[83] The submissions identified the information to obtain ("ITO") in question as being that sworn July 8, 2022. However, those submissions appear to be based on the erroneous submission that the tablet from which alleged child pornography was ultimately extracted was seized from Mr. Corporong's residence. The evidence in

the *Charter* application and in the ITO sworn August 11, 2022, clearly show that the tablet from which alleged child pornography was ultimately extracted was the tablet that Mr. Corporong handed over just prior to his arrest. The July 8, 2022, ITO is the one that supported the issuance of the warrant to search his residence. The August 11, 2022, ITO is the one that supported the warrant to conduct a post-seizure examination of the tablet and other electronic devices seized. As only the information extracted from the tablet is sought to be introduced, and the tablet was voluntarily handed over to Cst. Gougeon, the relevant ITO is that sworn August 11, 2022.

[84] That said, except to the extent that the August 11, 2022, ITO includes information regarding electronic devices seized from the residence of Mr. Corporong, and a request to search the content of all electronic devices in the possession of the police, and the July 8, 2022, ITO includes information regarding the expectation that such devices would be at Mr. Corporong's residence, both ITO's are essentially based on the same alleged factual background. Therefore, the analysis and conclusion on one would also apply to the other in any event.

[85] On a *Garofoli* review, the warrant is presumed to be valid, and the Defence bears the onus of showing it is invalid.

[86] It will be valid if the issuing judge or justice could have issued the warrant, which will be the case if, as articulated at paragraph 84 of *R. v. Sadikov*, 2014 ONCA 72: "there is sufficient credible and reliable evidence to permit a justice to find reasonable and probable grounds to believe that an offence has been committed and that evidence of the offence would be found at the specified time and place of search".

[87] As noted at paragraph 85 of *Sadikov*, the reviewing court undertakes its analysis after the portions of the ITO which must be excluded are excised and the ITO is amplified with such additional information as may be appropriate.

[88] As agreed by both parties, information obtained through a *Charter* breach must be excised: *R. v. Spencer*, 2014 SCC 43, para 74; and *R. v. Lam*, 2015 ONSC 2131, para 55. So, the information regarding the images Cst. Gougeon viewed on the tablet at Mr. Marchand's apartment must be excised.

[89] The Defence added to its *Charter* notice an alleged breach of the right to silence under s. 7 so that any statement obtained from Mr. Corporong in breach of his right to silence would be excised from the ITO's.

[90] It also acknowledged that the principle articulated in *R. v. Tessier*, 2022 SCC 35, at paragraph 39, that the confessions rule "protects the right to silence at all times during an investigation whether or not the interviewee is in detention, whereas the residual *Charter* protections of the s. 7 right to silence arise only on detention". Given my finding that Mr. Corporong was not detained when Cst. Gougeon spoke to him on the telephone prior to attending at Mr. Marchand's apartment in response to the 911 call, Mr. Corporong's statement to Cst. Gougeon that he had a library of child pornography on his tablet does not fall under the residual s. 7 protection and is not subject to the automatic excision rule.

[91] In addition, such statements against one's own penal interest are considered so credible and reliable that they are a recognized exception to the hearsay rule.

[92] For these reasons, Mr. Corporong's admission to Cst. Gougeon of having child pornography on his tablet is not to be excised from the ITO.

[93] I similarly find that Mr. Marchand's statement to the police that Mr. Corporong told him he had child pornography on his tablet is sufficiently credible and reliable to form part of the basis for issuing a search warrant.

[94] I have already concluded that, though the viewing of the images on Mr. Corporong's tablet breached his s. 8 *Charter* rights, Cst. Gougeon taking possession of the tablet did not, as Mr. Corporong voluntarily handed it over without any request from the police. Therefore, the handing over and taking possession of the tablet is not to be excised.

[95] On the August 11, 2022, ITO (and the July 8, 2022, ITO), excising the references to the following would still leave a sufficient basis that the issuing judge or justice could have granted the warrant to search for, and the content of, the electronic devices, including the tablet:

- That Cst. Gougeon asked Mr. Corporong to unlock his tablet and observed photo and video icons on the tablet which depicted children either naked or performing sexual acts.
- The information Cst. Gougeon provided to Cst. Bonia (who prepared the July 8, ITO) regarding the unlocking of the tablet, what he viewed on the tablet and the grounds he formed based on what he viewed.

[96] For reasons which I will outline in assessing whether the Crown has proven the voluntariness of Mr. Corporong's cautioned statement to Cst. Bonia, his rights to silence were not breached during that interview. There is no indication that the statements Mr. Corporong made to Cst. Bonia against his own interests during the interview was not credible and reliable. As such, the information Cst. Bonia obtained from him during that interview is properly included in the ITO.

[97] As noted, I agree with the Crown that excising the said portions would still leave an ample basis upon which the warrant or warrants in question could properly have been issued, including that:

- Mr. Corporong told Cst, Gougeon, Mr. Marchand and Cst. Bonia he had child pornography on his tablet; and,
- the police had seized that tablet and still had it in their possession.

[98] For these reasons I find that the warrants to search issued based on the July 8 and August 11, 2022, ITO's are valid.

ISSUE 7: DID THE FORENSIC DIGITAL ANALYST REVIEWING CHILD PORNOGRAPHY OUTSIDE THE DATE RANGE ON THE INITIAL SEARCH WARRANT FOR THE TABLET AND MICROSD CARD AMOUNT TO A WARRANTLESS SEARCH AND A BREACH OF MR. CORPORONG'S S. 8 *CHARTER* RIGHTS, AND, IF SO, DID THE ITO FOR THE NEW SEARCH WARRANT, WITH NO DATE RANGE, CONTAIN SUFFICIENT INFORMATION WITHOUT THE REFERENCE TO CHILD PORNOGRAPHY EXISTING OUTSIDE THE INITIAL DATE RANGE TO JUSTIFY GRANTING THE NEW SEARCH WARRANT?

[99] The Defence submits that the Digital Forensic Analyst with the RCMP Digital Forensic Services who imaged and parsed the MicroSD Card from the tablet, Glen MacKenzie, conducted a search of the contents of the tablet that went beyond what was authorized by the warrant because he "reviewed" images that were outside the date range specified.

[100] The Defence based its argument on the wording in paragraphs 16 to 18 of the ITO sworn by Cst. Lamont Bourque on August 11, 2022, which was entered into evidence as part of Exhibit VD2. That portion of the ITO provides the

rationale for the related wording in the warrant itself. However, the wording which governs what the warrant authorized is that in the warrant itself.

[101] The relevant wording in the warrant includes the following:

> Clause 1., Paragraph A., authorized the Analyst to "[c]onduct a post seizure examination to extract the following stored data from" the listed devices "between the 8th day of January, 2022 and the 8th day of July, 2022: document files, notes, pictures, videos, web browsing history, and other media meeting the definition of child pornography including photographic, film, other visual representations or audio on the seized devices".
>
> Clause 1., Paragraph B., authorized the Analyst to "[c]onduct a post seizure examination to extract … [a]ny stored data that has no date associated to it, including deleted or recovered data, and that falls within the" category set out in Paragraph A.
>
> Paragraphs D. and E. of Clause 1. stated:
>
> > "D. In order to gain access to the 'items' to be searched for described above, a member of the RCMP Digital Forensic Services (DFS) unit has to extract a full forensic image of the/each device, but will compile a report containing only the named "items" within that full forensic image;
> > E. Data which falls outside the scope of this Search Warrant will not be shared with the investigating officers. The DFS members will only provide the 'items' to the investigators which satisfy the description above;".

[102] The rationale behind this wording is that the software used must make an exact copy of all the data on the device to extract the items in it without affecting their digital integrity. As such, "there is no way to limit the scope of the data copied".

[103] Given this wording, and the rationale behind it, Mr. MacKenzie had to "review" all the "items" extracted to determine which, if any, he could include in a report and provide to the investigators.

[104] In his testimony, Mr. MacKenzie explained what he did, including that which follows.

[105] After he had produced a good forensic copy of the entire contents of the MicroSD card that was with the tablet, he put it in a forensic program which has a filter for detecting photos and videos. With what that filtered, he immediately saw materials constituting child pornography that were outside the date range specified in the warrant.

[106] He contacted the ICE Unit, then Cst. Bourque, and advised them that he had located child pornography but that it was outside of the date range.

[107] He did not turn over any photos or items because the warrant did not authorize him to share them if they were outside of date range. Everything remained on his forensic computer, until he received another warrant giving him authority to share those images. He was provided that warrant on November 8, 2022. He exported what he was authorized to include in his report, and provide to the investigators, onto the ICE server on November 9, 2022.

[108] Cpl. Oliver Roberts with the ICE Unit testified that he used software called Semantics 21 to separate the images and videos into categories, one of which is for materials that meet the definition of child pornography in the *Criminal Code*, then he later examined that category of items to determine where they fit within the Mission Scale.

[109] Mr. MacKenzie was asked to comment on the ITO dated November 7, 2022, upon which that new warrant was issued, both of which form part of Exhibit VD3.

[110] Paragraph 16 of that ITO states that he had "indicated that during his initial search he inadvertently located Child Pornography outside the date range of the initial warrant and dating back some 7 years". He clarified that there was no inadvertency. When he applied the filter for pictures and videos he saw it immediately.

[111] The Defence, relying on *R. v. Sasano*, 2022 BCSC 714, submits that the information in the November 7, 2022, ITO, regarding there being child pornography outside the date range in the extraction warrant should be excised because Mr. MacKenzie providing that information was not inadvertent and it was in breach of Mr. Corporong's s. 8 rights.

[112] In *Sasano*, the search warrant authorized searching for photos and videos "depicting the alleged offences". One of the investigating officers used photos and videos that predated the date of the alleged offences to further the investigation by showing them to a witness who could identify the surroundings and by identifying a voice as being that of the accused.

[113] The reviewing judge was of the view that the photos and videos predating the date of the alleged offences could be authorized as going to the *mens rea* of the offences but noted that the investigating officer's self-imposed date restriction

could arguably be considered a s. 8 breach: para 118. The judge added that sending screenshots of the video to a witness exacerbated the breach.

[114] Also, due to a flaw in the Cellebrite software used to create the extraction report, that report included chat messages in a group chat conversation that were outside of the date parameters specified in the warrant. The same investigating officer noticed that and directed another officer to apply for another search warrant covering the period encompassing those additional chat messages, which additional search warrant was issued.

[115] The judge found that the investigator examining those chat messages was a s. 8 breach.

[116] In addition, the investigator had continued reviewing the extraction report despite knowing it contained items outside the scope of the first warrant: para 116.

[117] The judge further accepted the Crown concession that extraction of a contact list from a cel phone, and using that list, amounted to a s. 8 breach, despite indicating the authorization to extract that might be inferred from the wording of the warrant: paras 106 to 109, and 117.

[118] Applying and balancing the *Grant* factors, the court dismissed the application to exclude the evidence in the Cellebrite report.

[119] In the case at hand, when Mr. MacKenzie noticed that the child pornography he saw amongst the contents of the tablet was outside of the date parameters in the search warrant, he did what the warrant said. He did not provide those “items” to the investigators. Instead, as he testified, he complied with his obligation to report the existence of child pornography if he discovers it.

[120] He reported it to the ICE Unit next door to him. They suggested a new warrant without the date range. He also advised the investigator, Cst. Bourque that he had discovered child pornography outside the date range and of what the ICE unit had suggested. Unlike in *Sasano*, in the case at hand, there was no unauthorized viewing of items outside the parameters authorized by the first warrant.

[121] Therefore, there was no s. 8 breach in the case at hand that would result in the information regarding the existence of child pornography outside the date range

being excised from the ITO for the subsequent warrant which has no date range limitation.

[122] Further, even if it was a s. 8 breach, and that information was excised from the ITO for the subsequent warrant, it would properly be augmented by evidence that no child pornography was found within the date range in the initial extraction warrant, despite the multiple admissions against interest by Mr. Corporong that he had child pornography on his tablet. Augmented in that way, the issuing judge could still have granted the subsequent warrant eliminating the date range.

ISSUE 8: SHOULD ANY EVIDENCE BE EXCLUDED AS A REMEDY UNDER S. 24(2)?

[123] I must now determine whether the evidence extracted from the tablet should be excluded under s. 24(2) of the *Charter* because of the s. 8 breach associated with Cst. Gougeon conducting a brief confirmatory viewing of the contents of the tablet after having Mr. Corporong unlock it in the absence of informed consent.

[124] S. 24(2) requires that the evidence 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".

[125] *R. v. Grant*, 2009 SCC 32, at para 71, summarized the proper approach to a s. 24(2) inquiry as follows:

> " When faced with an application for exclusion under s. 24(2), a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to: (1) the seriousness of the *Charter*-infringing state conduct (admission may send the message the justice system condones serious state misconduct), (2) the impact of the breach on the *Charter*-protected interests of the accused (admission may send the message that individual rights count for little), and (3) society's interest in the adjudication of the case on its merits. The court's role on a s. 24(2) application is to balance the assessments under each of these lines of inquiry to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute."

[126] *Grant*, and the companion case, *R. v. Harrison*, 2009 SCC 34, provide additional guidance for: the three lines of inquiry preceding the fourth step; and for the fourth step itself, which involves balancing the effects of admission against

those of exclusion, considering the points relevant to the three preceding lines of inquiry.

[127] They direct that the points the court is to consider in assessing the seriousness of the *Charter*-infringing state conduct include the following:

1. Wilful or reckless disregard for *Charter* rights will have a much greater negative impact on public confidence in the administration of justice than violations that are minor or technical in nature, inadvertent, or the result of understandable mistake.
2. The court should consider whether there are any extenuating circumstances. They may diminish the seriousness of the conduct.
3. Good faith on the part of the police will also diminish the seriousness of the conduct. However, ignorance of *Charter* standards does not have a similar diminishing effect.
4. Conduct that is systemic or part of a pattern of abuse will generally augment the seriousness of the conduct.
5. The more serious the conduct, the more it tends to support exclusion of the evidence obtained through the *Charter* infringing conduct.

[128] As indicated at paragraphs 141 and 142 of *R. v. Snowdon*, 2016 NSSC 278, good faith is only established if the officer in question "had an honest and reasonably held belief that he or she was authorized to act in the manner in which they did".

[129] *R. v. Ramage*, 2010 ONCA 488, at paragraph 48, states that, at this stage, the court, in addition to considering what the police did, should consider "their attitude when they did it". The attitude being referred to in that case was one that showed little respect for the individual rights of the arrested person. The police officer had ignored obvious problems with the accused's consent and forged ahead as a shortcut to obtaining the evidence he wanted.

[130] *R. v. Pasian*, 2017 ONCA 451, at paragraphs 8 and 9, discussed the concept of discoverability which impacts both the first and second lines of inquiry. It stated:

> "Evidence is 'discoverable' for the purpose of s. 24(2) when it 'could have been obtained through lawful means had the police chosen to adopt them'."

[131] *Grant* and *Harrison* outlined that the proper approach to assessing the impact on the *Charter*-protected interests of the accused includes the following:

1. The court must determine whether "the truth-seeking function of the criminal trial process would be better served by admission of the evidence, or by its exclusion". Therefore, the negative impact of admitting and of failing to admit the evidence must be considered.
2. "The reliability of the evidence is an important factor in this line of inquiry."
3. "The importance of the evidence of the prosecution's case is another factor that may be considered" and is "corollary to the inquiry into reliability". For instance, if the evidence is of questionable reliability and is the whole foundation of the Crown's case, that tends to favour exclusion. However, if the evidence is highly reliable and its exclusion would leave the crown with no case, that tends to favour inclusion.
4. The seriousness of the offence is a double-edged consideration. On the one hand, there is a greater societal interest in ensuring that charges for serious offences are prosecuted. On the other hand, when the potential penalty following conviction is great, there is a heightened public interest in ensuring that the process leading to the conviction is beyond reproach.

[132] *Harrison*, at paragraph 36, provided the following directions and guidance in relation to the fourth step, that is the balancing of the assessments under the three lines of inquiry:

> "The balancing exercise mandated by s. 24(2) is a qualitative one, not capable of mathematical precision. It is not simply a question of whether the majority of the relevant factors favour exclusion in a particular case. The evidence on each line of inquiry must be weighed in the balance, to determine whether, having regard to all the circumstances, admission of the evidence would bring the administration of justice into disrepute. Dissociation of the justice system from police misconduct does not always trump the truth-seeking interests of the criminal justice system. Nor is the converse true. In all cases, it is the long-term repute of the administration of justice that must be assessed."

[133] As indicated at paragraph 42 of *Harrison*, the question the court must answer at this balancing stage is whether "the price paid by society for an acquittal

in [the] circumstances is outweighed by the importance of maintaining *Charter* standards".

[134] I will now apply these principles and directions to the s. 24(2) inquiry in the case at hand.

Seriousness of The *Charter*-Infringing State Conduct

[135] The Defence submits that the s. 8 breach in question is serious because Cst. Gougeon "aggressively pursued eliciting inculpatory information from Mr. Corporong by … requesting consent to search his tablet device shortly after their arrival, before they made any efforts to ensure Mr. Corporong was informed of his *Charter* rights".

[136] The Crown submits there were no *mala fides* in Cst. Gougeon's actions as he believed he had Mr. Corporong's consent to view the tablet. In addition, he only looked at it for the brief moment required to confirm the self-reporting by Mr. Corporong, then closed it. A warrant to search the tablet was subsequently obtained. Therefore, it was an inadvertent violation, as opposed to a willful or reckless disregard of the accused's s. 8 right.

[137] Cst. Gougeon said he did not get a warrant to seize the tablet upon attending because an immediate response was required, as it was relayed as an emergency with a public safety issue and he needed to verify the mental health concern. He said he did not seize the tablet and get a warrant to search it because Mr. Corporong turned it over willingly and he just looked at it to confirm the call was legitimate and not a mental health call or one fueled by intoxication. In the circumstances, though possible, it would not have been reasonably feasible to contact the JP Centre and wait to get a warrant before verifying the information so he could deal with the matter. Also, as the event occurred within the Town Detachment's area, that process would have been handed over to them.

[138] The unusual self-reporting, and the resulting desire to avoid having to take Mr. Corporong into custody if it emanated from a mental health issue or intoxication, were clearly extenuating circumstances which diminish the seriousness of the conduct.

[139] The circumstances revealed an attitude which showed augmented respect and concern for Mr. Corporong.

[140] I agree with the Crown that he honestly believed that he had Mr. Corporong's valid consent to view the tablet and, thus, was not acting with *mala fides*.

[141] It is also noteworthy that, if Cst. Gougeon had acted in a detached and mechanical way, without concern for whether Mr. Corporong's self-reporting was the product of a mental health issue or intoxication, for reasons already noted, he would have had grounds to arrest him immediately on arrival and seize the tablet incidental to arrest to preserve evidence. There also would have been sufficient grounds, as I have already indicated, to obtain the warrants to search the contents of the tablet. Consequently, the evidence in question was discoverable in any event.

[142] Cst. Gougeon testified that he had never experienced such self-reporting before and that it is a very unusual. Therefore, the officer's conduct is clearly not systemic or part of a pattern of abuse.

[143] Considering these points, I find that the breach was of limited seriousness and thus provides limited support to exclude the evidence in question.

Impact on the *Charter*-Protected Interests of the Accused

[144] The Defence submits the breach had an immense impact on Mr. Corporong's *Charter*-protected interests.

[145] The Crown submits that the breach impinged upon an important protected interest, moderately militating in favour of exclusion of the child pornography on his tablet. However, the evidence was discoverable through non-conscripted means, as Cst. Gougeon already had grounds to arrest him and, upon arresting him, could have looked at the tablet incidental to arrest under the principles outlined in *R. v. Fearon*, 2014 SCC 77, and *R. v. Greaves*, 2004 BCCA 484, which lessens the impact of the breach on his *Charter*-protected interests.

[146] I note that, in those cases, the cell phones in question were not password protected. So, the officer could easily view their contents without conscripting the user to put in their password, unlike in the case at hand where Cst. Gougeon had to ask Mr. Corporong to unlock it. However, it appears from the evidence of Mr. Mackenzie that Cst. Gougeon could simply have removed the MicroSD card and put it in another tablet, as the card was not encrypted. So, though it would have

taken a little longer, Cst. Gougeon could still have viewed the contents without conscripting Mr. Corporong to unlock his tablet.

[147] A person's right to the privacy of data on their personal tablet is an important *Charter*-protected right. However, Mr. Coporong's self-reporting that he had child pornography on that tablet indicated a diminished expectation of privacy in that portion of the contents of his tablet, which is the portion which Cst. Gougeon saw immediately upon clicking on the gallery icon. Further, it is only because of his concern for Mr. Corprong's dignity that Cst. Gougeon took a cursory look at the contents of the tablet to confirm his unusual self-reporting. These points lessen the impact of the breach.

[148] I also agree that the contents were discoverable in a non-conscriptive way, at least by arresting Mr. Corporong, seizing his tablet and having its contents searched pursuant to a warrant.

[149] For these reasons, I find that this factor only militates in favour of exclusion in a moderate to limited way.

Society's Interest in the Adjudication of the Case on Its Merits

[150] The Defence concedes that the evidence in question is reliable and that this factor weighs in favour of admissibility.

[151] The Crown also submits that the evidence is relevant and reliable and that excluding it will undermine the truth-seeking function, rendering the trial unfair from the public perspective, "thus bringing the administration of justice into disrepute".

[152] The actual images and videos on the tablet which allegedly constitute child pornography are obviously relevant and reliable. If they are excluded, the Crown would effectively be left with the admissions by Mr. Corporong that he had child pornography on his tablet without any details from which it could be determined whether what he was referring to meets the *Criminal Code* definition of child pornography. Therefore, excluding the evidence in question would effectively gut their case.

[153] For these reasons, this factor weighs heavily in support of admissibility.

Balancing of the Assessments Under the Three Lines of Inquiry

[154] The Defence did not advance any analysis of the balancing exercise in the circumstances of the case hand.

[155] The Crown submits that, in this unique set of circumstances, the evidence should be admitted.

[156] I agree that the circumstances of the case at hand are unique.

[157] A fully informed member of the public, aware of the circumstances and the *Charter* values at play, would find the infringing conduct and impact on Mr. Corporong's privacy interests, collectively, to have been limited. They would see it as a situation where Cst. Gougeon was only trying to be as considerate of Mr. Corporong's liberty interests as he could, and showing concern for his dignity, by wanting to verify that the unusual self-reporting was not the product of a mental health issue or of intoxication, before taking him into custody. A fully informed member of the public would not consider it important that such police conduct be dissuaded or that the justice system dissociate itself from such police conduct. They would easily see that, in the circumstances of the case at hand, the price paid by society for an acquittal would outweigh the importance of maintaining *Charter* standards. They would not see the admission of the evidence as bringing the administration of justice into disrepute. Rather, they would see excluding the evidence as bringing the administration of justice into disrepute.

S. 24(2) Conclusion

[158] For these reasons, I find that the admission of the evidence would not bring the administration of justice into disrepute.

[159] Therefore, the data extracted from the tablet, which includes the alleged child pornography extracted from the MicroSD card associated with it and provided to the investigators, is admissible.

ISSUE 9: HAS THE CROWN PROVEN THE VOLUNTARINESS OF MR. CORPORONG'S CAUTIONED STATEMENT AND UTTERANCES BEYOND A REASONABLE DOUBT?

[160] The Defence makes no submissions on voluntariness, simply stating that they are not conceding it.

Utterances During Telephone Conversation with Cst. Gougeon

[161] The Crown submissions in relation to the statements Mr. Corporong made to Cst. Gougeon during the telephone conversation preceding police attendance in response to his 911 call include the following:

- There was no oppression as Cst. Gougeon was not even in Mr. Corporongs' presence, and the conversation was so short that oppressive circumstances such as denial of basic needs or persistent and intimidating questioning could not have arisen.
- There were no inducements of any kind, whether threats or promises.
- There was no police trickery. Cst. Gougeon simply called to find out what was happening and why he was being asked to respond to Mr. Corporong's 911 call. Cst. Gougeon did not resort to lies, deceits or untruths.
- Although, Mr. Corporong had consumed chocolate containing psychedelic mushrooms, Mr. Corproron stated that the police knew him, knew what he had done and were to come and arrest him. Therefore, he clearly knew what he was saying, that he was saying it to a police officer and that the police could use it to his detriment. As such, he had an operating mind.
- Consequently, the Crown has established the voluntariness of Mr. Corporong's statement to the police during that telephone call.

[162] I agree that the evidence led during the voluntariness application establishes, beyond reasonable doubt, the points noted by the Crown.

[163] I also note that the telephone call in question was effectively a continuation or verification of Mr. Corporong's 911 call. The dissent, in *R. v. Tessier*, 2022 SCC 35, despite taking a much more stringent approach to the admissibility of confessions where a suspect was not cautioned, at paragraph 185, stated that police warnings "are not required for statements made on 911 calls, complainant initiated statements, spontaneous utterances, or unsolicited statements". The statements in question by Mr. Corporong fall within those categories. Therefore, the absence of a police caution does not detract from the voluntariness of the utterances.

[164] For these reasons, I find that the Crown has proven the voluntariness of the utterances Mr. Corporong made to Cst. Gougeon during the telephone call in question beyond a reasonable doubt and they are admissible.

Cautioned Statement to Cst. Bonia

[165] The Crown submissions in relation to the statements Mr. Corporong made during his cautioned statement to Cst. Apryl Bonia include the following:

- Cst. Bonia did nothing to create an oppressive atmosphere and there were no oppressive circumstances. She treated Mr. Corporong gently and with respect. She took him outside so that he could smoke. She ensured he had coffee. Due to the air conditioning making it cold at the detachment she offered him a blanket. She communicated to him that the most important thing was his health and that she was going to make sure he saw a doctor that day. The interview was less than an hour.
- Cst. Bonia did not present him with any inducements, either threats or promises. They simply had a conversation. Even when he stated that he would not say where he obtained the child pornography, Cst. Bonia simply let the issue go.
- Cst. Bonia did not utilize lies, deceit, untruths, or any other police trickery while interviewing him.
- Mr. Corporong had consumed psychedelics and marijuana prior to his arrest. However, he was taken into custody at about 1 AM and his interview did not start until about 11:30 AM. He had no access to intoxicants while in custody. It is clear from viewing the videotape of his interview that he knew he was speaking to a police officer, what he was saying and that it could be used to his detriment. Therefore, he had an operating mind.
- Consequently, the voluntariness of his statement has been proven beyond reasonable doubt.

[166] I agree completely with the submissions of the Crown. The evidence presented on the voluntariness application establishes the points noted by the Crown. In addition, it establishes other points including those which follow:

- None of the other officers who had contact with Mr. Corporon prior to him providing a cautioned statement to Cst. Bonia presented any inducements, whether promises or threats, created an atmosphere of oppression, or engaged in any form of police trickery.
- The chartering and cautioning of Mr. Corporon included the secondary caution.
- He spoke with a lawyer before giving his statement to Cst. Bonia. Therefore, it can be assumed that he received advice about his right to silence.

[167] I also highlight that he was able to choose to answer some questions and not others, showing that he knew he was able to refuse to speak and, notably, did refuse to answer the question regarding where he obtained the child pornography.

[168] For these reasons I find that the Crown has proven beyond reasonable doubt that Mr. Corporong's cautioned statement to Cst. Bonia was voluntary and is admissible.

Utterances to Cpl. Wall

[169] The evidence of Cpl. Sandra Wall included the following:

- On December 7, 2022, she attended the residence of Mr. Corporong in Beaver River, Digby County, by herself, to verify the identity, and check on the well-being, of children who had been captured in photos located on one of the cell phones seized from that residence and belonging to Mr. Corporong.
- She was greeted at the door by a woman who identified herself as Crystal Corporong and said she lived there. She is Mr. Corporong's sister. She identified the children in the photographs as being her nieces.
- Cpl. Wall asked if Mr. Corporong was there as she wanted to explain why she had attended the residence. She said he was and that she would get him.
- Cpl. Wall remained outside the door to the residence and spoke to Mr. Corporong when he came there.

- She was in full police uniform and driving a marked police vehicle which was visible from the door.
- She explained to him that she had come there to verify the identification of the children and to ensure that they were not living at the house.
- She asked him about the vehicles in the driveway, just as part of making general conversation. He responded that they were not his and that he had no license.
- She did not ask him anything about the children in the photos, as Ms. Corporong had already confirmed their identity.
- When she turned to leave, Mr. Corporong became agitated and said to her that she should be thankful that he had called on himself because otherwise the police would not know of his crime. He added that he only turned himself in so that he could seek mental help. He also complained of the police showing up at his house and harassing him.
- Those comments were not in response to any question from her.
- She then left.
- She was at the house less than 10 minutes in all, and her interaction with Mr. Corporong was only about 1 to 3 minutes.
- She did not detain, arrest, handcuff, charter or caution Mr. Corporong as her only purpose for being there was to confirm the identity and safety of the children in the photos on one of his devices.
- She did not make any threats or promises to induce Mr. Corporong to say anything.

[170] There were no credibility or reliability concerns in relation to the evidence of Cpl. Wall. Therefore, I accept her evidence.

[171] The Crown's submissions in relation to the utterances made by Mr. Corporong to Cpl. Wall include the following:

- Mr. Corporong was not detained or restrained in any way. The utterances about needing mental help and that being the reason he turned himself in were not made in response to any question by Cpl. Wall.

- There were no threats or promises, or inducements of any kind.
- Cpl. Wall did not resort to any lies, deceit, untruths or any other type of police trickery.
- Mr. Corporong responded appropriately to the comments that Cpl. Wall did make and the question she did ask.
- His comments about turning himself in and harassment show that he knew he was speaking to a police officer. Cpl. Wall's description of the interaction shows that he knew what he was saying and that it could be used to his detriment. This shows he had an operating mind.
- Consequently, the Crown has established the voluntariness of his utterances to Cpl. Wall beyond reasonable doubt.

[172] I agree completely with the points submitted by the Crown and that the evidence of Cpl. Wall, establishes those points.

[173] Cpl. Wall did not warn Mr. Corporong that he need not say anything. However, as noted by the dissent at paragraph 185 of *R. v. Tessier*, supra, such a warning is not required for unsolicited statements such as the utterances in question which Mr. Corporong made to Cpl. Wall.

[174] For these reasons, I find that the Crown has proven beyond a reasonable doubt that those utterances to Cpl. Wall were made voluntarily and are admissible.

CONCLUSION

[175] For the foregoing reasons, Mr. Corporong's *Charter* application requesting exclusion of evidence is dismissed in its entirety and the Crown's voluntariness application is granted. Therefore, the evidence, statement and utterances in issue are all admissible.

Muise, J.