ONTARIO COURT OF JUSTICE

DATE: 2020 09 25
COURT FILE No.: Oshawa Information # 19-A38424 and 18-PO23640

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

SHAQUILLE MARTIN

Before Justice S. Magotiaux
Heard on September 9 and 10, 2020
Reasons for Judgment released on September 25, 2020

R. Greenway .....counsel for the PPSC
M. Bavaro ..... . counsel for Mr. Martin

MAGOTIAUX J.:

[1] It is not unusual for police to arrest a person found driving a vehicle, and to search the vehicle and find items that result in further criminal charges. Because such interactions are routine for a police officer on patrol, the public expects that officers will be trained in the basic exercise of, and limits to, their powers in a roadside scenario.

[2] In this case, the police failed to meet their basic, well-entrenched constitutional obligations. These reasons explain why I have found that the DRPS breached Mr. Martin's right to counsel as well as his right to be free from unreasonable search and seizure in a roadside arrest, and why the cocaine and fentanyl seized in connection to those breaches must be excluded as a result.

[3] I will give a summary of the facts, followed by discussion of the issues raised under ss. 8, 10 and 24(2) of the *Charter* to explain my conclusions.

1. Facts

[4] The facts in this case are not really in dispute. Some detail is required to frame the *Charter* issues.

[5] Mr. Martin was observed by officers driving a Jeep Compass that had previously been reported stolen. Officers Robertson and Collins were driving a marked police vehicle. They both recognized the Jeep from a hot sheet or BOLO (be on the look out) report from the previous week. When the officers ran the licence plate, they saw that the registered owner had recently come into a police station in Whitby to remove the alert. The Jeep was now classified as recovered.

[6] The search of the licence plate also generated various reports, some of which the officers scanned or partially read in their vehicle while following the Jeep. One report noted that another officer had applied for, but not yet been granted, a warrant to arrest Shaquille Martin on charges of theft of the Jeep and breach of court orders. There was also some kind of history of domestic relationship between Mr. Martin and the registered owner of the vehicle noted in the reports, though neither officer wrote down or could remember these particular details.

[7] Officer Collins was able to link to Ministry of Transportation records and pull up a driver's licence, with photograph, for Shaquille Martin. The officers got the photograph right around the time that the Jeep pulled into a Walmart parking lot and parked. The driver, who appeared to be the lone occupant, got out of the Jeep and entered the store. He came out a few minutes later. The officers were able to compare the photo with the driver of the Jeep and believed it to be the same person. They planned to arrest him based on the warrant application.

[8] When he came out of the Walmart, Mr. Martin got into the driver's seat and started the Jeep. The marked police vehicle pulled up and parked just behind him. Both officers exited and approached.

[9] Officer Robertson was closest to the driver's door. He said Mr. Martin got out the vehicle. Officer Robertson asked his name. He answered Shaquille Martin. Officer Robertson arrested Mr. Martin for theft over $5000.00 (the Jeep) and fail to comply with recognizance and probation based on the outstanding warrant application. That was at 10:52 pm.

[10] No right to counsel or caution were read upon arrest.

[11] Mr. Martin was handcuffed. Officer Collins joined Officer Robertson and the two officers did a pat down search. They found $9750.00 cash and two cell phones in Mr. Martin's pockets. Officer Robertson thought the bundled cash was suspicious. He asked where it was from and Mr Martin told him it was from a roofing job. Officer Robertson asked if he had pay stubs or records, and Mr. Martin said he did not.

[12] After the pat down, Officer Collins took Mr. Martin to the police vehicle. Officer Robertson went to search the Jeep. I will address the search in more detail when considering the *Charter* argument.

[13] Officer Robertson did not give specific evidence about what parts of the vehicle he searched and in what order. Although he initially said he searched the back seat first, he later said that his initial action was to stick his head in the front driver's door area where he immediately noticed an overwhelming odour of marihuana. He then opened

the back door. He saw a bag on the back driver's side seat which he described as a "man purse". He opened the bag and located baggies of white powder, which he believed to be cocaine and a purple substance, which he believed to be heroin and a weigh scale. There were no personal items in the bag to identify the owner. He seized the bag.

[14] Officer Robertson also found baggies of marihuana and marihuana shake somewhere in the front of the car, but he did not recall or record where in the front seat. He did not recall or record whether he searched the glove box or console.

[15] Officer Collins returned from securing Mr. Martin in the police vehicle and joined in the search. He did not locate or seize any evidence. He also noted the smell of marihuana.

[16] After finding what appeared to be drugs in the Jeep, Officer Robertson returned to his police vehicle and re-arrested Mr. Martin for drug offences and possession of property obtained by crime in relation to the cash found in the pat down search. After this arrest, Officer Robertson read the right to counsel and caution at 11:00pm. Mr. Martin immediately advised he wished to speak to his lawyer. He provided the name but did not have contact information.

[17] Mr. Martin was transported back to the station and booked. He was subjected to a strip search in light of the substances seized. Officer Robertson looked up the number for counsel and left a voice message indicating the nature of the arrest and time for bail hearing and the call back number for cells. He then went to process the money and drugs seized. He did not have any further involvement with Mr. Martin and did not ever check whether there had been counsel consultation.

2. Charter

a) Overview

[18] Mr. Martin argues that his rights pursuant to s. 8 and s. 10(b) of the *Charter* were violated when the police searched the Jeep after arresting him outside of the vehicle and delayed reading his right to counsel until after the vehicle search and discovery of drugs.

[19] The Crown says that Mr. Martin did not establish that he had a reasonable expectation of privacy in the Jeep and cannot therefore allege a s. 8 breach in its search. If there was a reasonable expectation of privacy, there is nevertheless no breach of s. 8 given that the officers properly searched the vehicle incident to arrest. The Crown concedes a s. 10(b) breach in the short delay between arrest and the informational component of s. 10(b) but argues that the appropriate remedy for such a breach is the exclusion of utterances made by Mr. Martin in that brief period.

b) Section 8

i) Standing

[20] As a preliminary issue, the Crown argued that Mr. Martin did not have standing to bring the s. 8 challenge.

[21] The right to be free from unreasonable search and seizure is a personal right. In order to allege breach, a person must establish that he or she had a reasonable expectation of privacy in the place or subject matter of the search: *R. v. Edwards*, [1996] 1 S.C.R. 128, *R. v. Jones*, 2017 SCC 60. A person who establishes that she or he held a reasonable expectation of privacy in all of the circumstances of the case is said to have standing to bring the s. 8 application.

[22] The Supreme Court of Canada gave courts in depth guidance on how to assess standing arguments in *R. v. Jones*. It is important to first identify the subject matter of the search, and then to consider whether a subjective and objectively reasonable expectation of privacy has been made out; *Jones*, at para. 13. The burden to establish standing is on the claimant, but it is not a high bar: *Jones*, paras.17, 21, *R. v. Labelle*, 2019 ONCA 557, at para. 22.

[23] The claimant is entitled to rely on any part of the Crown's theory to establish standing: *Jones*, at para. 9, *Labelle*, at para. 31. Fairness requires that the accused person not be placed in the "catch-22" situation of having to testify on the *voir dire* to assert his constitutional rights in a manner that would compromise his defence if the *Charter* application is not successful.

[24] The subject matter of the search is twofold; the vehicle itself, and the bag inside.

[25] Relying on the Crown theory, as he is entitled to do, Mr. Martin can easily establish that he held a reasonable expectation of privacy in the bag: *Jones*, at para. 9. The Crown theory, and the basis of the prosecution, is that the items found in the vehicle, no matter where they were found, were all knowingly possessed by Mr. Martin. The Crown relies on the inference that the bag containing the cocaine and fentanyl belonged to Mr. Martin, because it was located close to him and contained very valuable drugs. That bag was closed when seen on the seat. It contained no identification, wallet or personal items in any name.

[26] The vehicle is a more complicated issue. At first blush, it is tempting to say that since he was being arrested for theft of that vehicle, he can't reasonably expect privacy in it's contents. But in my view the analysis is not that simple.

[27] Applying the *Edwards* factors to the limited evidence before me, I make the following findings:

i) **Presence**: Mr. Martin was the driver and lone occupant of the vehicle. He had possession and control of the vehicle and was present at the time of the search.

ii) **Ownership**: Mr. Martin is not the registered owner of the car. Exhibit 4 in these proceedings is an MTO record that establishes ownership.

He was or had been in a domestic relationship with the registered owner. The officers read indication in their reports generated from the licence plate search which referenced a domestic connection to the theft and breach allegations, suggesting that there was a personal connection between Mr. Martin and the registered owner.

iii) **Ability to Regulate Access:** At the time of the search Mr. Martin had the keys, and had the physical ability to regulate access to the car. But on a broad level, he had no legal authority to regulate access, as demonstrated by the theft charge.

iv) **Historical Use:** There was no specific information about historical use. The report of theft and the warrant application demonstrate an alleged prior *unauthorized* use, but the recent report that the vehicle had been recovered could support current use with permission.

v) **Subjective expectation of privacy:** Mr. Martin did not testify. He is not required to do so and could be forced to compromise his substantive defence if compelled to assert the subject expectation of privacy in testimony.

There is no direct evidence of subjective expectation of privacy, but in my view one can be inferred on the Crown's theory and the evidence before me. Mr. Martin exited the vehicle and approached the officers when he saw them coming. He did not invite entry to the vehicle in any way. The vehicle was not presently classified as stolen. The bag was closed and in the back seat away from view.

[28] The Crown argues that any subjective expectation of privacy is not objectively reasonable given that Mr. Martin was being arrested for theft of that very vehicle. However, as noted, the owner recently reported that it was recovered, and the owner was in a domestic relationship of some kind with Mr. Martin. He had the keys and was the sole occupant at the time. The officers did not ask any questions about his lawful authority to have the Jeep. I am mindful that Mr. Martin bears the burden on the issue of standing, but the threshold is not high. The Crown theory was that he knowingly possessed everything in that vehicle, and at the time of the search, the vehicle was not properly classified as a stolen vehicle.

[29] Putting together the totality of circumstances, I conclude that it was objectively reasonable for Mr. Martin to maintain an expectation of privacy in the vehicle and bag, albeit a reduced expectation of privacy as it relates to the vehicle itself. If the Jeep had been reported stolen and that alert was active when the accused was arrested, I would not have reached this conclusion. His presence, access, historical use and current possession would all have been illegal rendering any expectation of privacy unreasonable. It is the report by the owner, with whom he shared a domestic relationship of some kind, that the vehicle was now recovered, proximate to the time of

arrest, that tips the scales in favour of my finding that there is a reasonable expectation of privacy in the vehicle.

ii) Warrantless Search

[30] Having found a reasonable expectation of privacy in the contents of the Jeep, I will consider the argument that Mr. Martin's s. 8 rights were breached by the police conduct.

[31] In the absence of a warrant, it falls to the Crown to justify the search.

[32] In order for a warrantless search to be constitutional, it must be authorized by law, the law must be reasonable, and the search must be conducted in a reasonable manner: *R. v. Collins*, [1987] 1 S.C.R. 265.

iii) Search Incident to Arrest

Law

[33] In this case, the police relied on the common law power of search incident to arrest as the law authorizing the search. For a search incident to arrest to be justified, the arrest must be lawful, the search must be connected to the arrest, and the search must be conducted in a reasonable manner: *R. v. Stillman*, [1997] 1 S.C.R. 607.

[34] A vehicle may be legitimately searched incident to arrest, but there is no categorical power to search a vehicle every time a driver or passenger is detained or arrested. The vehicle search, like any search incident to arrest, is subject to important limitations: *R. v. Belnavis*, [1997] 3 S.C.R. 341, *R. v. Caslake*, [1998] 1 S.C.R. 51.

[35] *Caslake*, at para. 25, emphasized that the most important restriction on the search incident to arrest power is that the search must be truly incidental to the arrest. The importance of the link to the arrest has been emphasized in many cases since. See for example *R. v. Fearon*, [2014] 3 S.C.R. 621, at para. 20, *R. v. Nolet*, [2010] 1 S.C.R. 851, at para. 49, and the recent discussion of search incident to arrest limits applied in a very similar fact scenario in *R. v. Santana*, 2020 ONCA 365.

[36] To assess connection to the arrest, a court looks to the purpose(s) of the search at issue. Legitimate purposes for a search incident to arrest include protecting police or public safety, preventing the loss or destruction of evidence, and discovering evidence for use against the accused: *Caslake*, at para. 25.

Application

[37] The circumstances in this case do not support the search conducted by the officers. While it was not contested that the arrest was lawful, the search was not connected to the arrest.

[38] There were two purposes of the search incident to arrest in this case, as articulated by both officers: 1) to discover evidence such as drugs or weapons or other

illicit material, and 2) to complete the search which is to be conducted as a matter of policy.

[39] Both officers both indicated that they were searching for evidence. There were no officer or public safety concerns. There was no reference by either officer to any indication of a history or suspicion of weapons or violence specific to Mr. Martin. There was similarly no mention by either officer of any concern for loss or destruction of evidence. Nor could there be. Mr. Martin was handcuffed in police custody, and the vehicle was being held by police, so nothing would be lost.

[40] Both officers expressly agreed that they were not searching for evidence of the offences of theft and fail to comply. Officer Robertson said that he found the bundled cash on Mr. Martin suspicious and was going to look for illicit items in the Jeep; for more money or drugs. He did not advise Mr. Martin of that suspicion or purpose. Officer Collins said people often try to hide things like weapons or drugs from police. That is what they were looking for.

[41] A search for evidence could have been properly justified here: *Santana*, at para. 29. If they were searching the vehicle for ownership documents or personal identification or court papers linked to either Mr. Martin or the registered owner, there would be a logical nexus to the theft and fail to comply arrest. But that did not happen. The officers could not even remember whether they opened the glove box or looked in the console, which would be the obvious places to look for such evidence.

[42] In terms of the second purpose, the set practice of searching in these circumstances, both Officers Robertson and Collins testified that if a person is arrested who occupied the driver seat of a vehicle, that vehicle is going to be searched as a matter of policy.

[43] I am troubled by at the lack of understanding of these officers as to the scope and limits of their routine investigative powers. Both officers repeatedly testified that Mr. Martin had recently “occupied the driver’s seat” of the vehicle, and seemed to assert that fact as a basis for blanket authority to immediately search the vehicle

[44] To be clear, lest there be a common practice in the DRPS, the police are <u>not</u> automatically justified in searching a vehicle or even the driver’s area of the vehicle every time they arrest someone who has recently occupied the driver’s seat of that vehicle. That is simply not the law. That has not been the law since at least the late 1990s when *Caslake* and *Belnavis* were decided. Courts at all levels, including the Supreme Court of Canada, have continued to grapple with assigning purpose and scope and limit to police powers to search vehicles in particular circumstances. It is always a case specific determination made in consideration of all of the circumstances, including the nexus to the arrest; *Fearon*, at para. 13.

[45] The officers were searching for drugs or illicit material based on their suspicions of the origin of the money located on Mr. Martin and their general policy of looking in vehicles incident to arrest. That is too tenuous a connection. The search was not sufficiently linked to the arrest for theft and breach and does not therefore fall within the proper scope of the search incident to arrest power.

iv) Other Search Powers

[46] There were several references in evidence and submissions to other bases to justify the search in this case. The Crown noted that the *Cannabis Control Act* provides the police with authority to search a vehicle once the odour of marihuana has been detected, and further that the officers referred to the need for an inventory search and for a search of the apparently stolen vehicle before return to the registered owner.

[47] The Crown is correct in pointing out that there were search powers, including warrantless search powers, which could have authorized at least some of the search here.

[48] The problem for the Crown is that the officers did not express their purpose by reference to any of those authorities. A search cannot be justified in retrospect by pointing to legitimate purposes. The purpose relied to support the search must be the actual purpose, or at least one of the actual purposes, in the mind of the officers at the time; *Santana*, at para. 21.

[49] Officer Robertson did say that he immediately smelled marijuana upon sticking his head in the driver's door, post-arrest. But he was already opening the door and searching the car at that point. As noted in *Santana*, the initial visual inspection is itself a search for s. 8 purposes. Officer Robertson commenced that search with the purpose of looking for drugs or other illicit items before he smelled anything. He also articulated his subjective purpose at the time as a search for drugs, which he suspected as a result of the bundled money. He did not say he was searching pursuant to legislative power regarding cannabis.

[50] An inventory search is also a potential authority for examining and logging the contents of the vehicle. But Officer Robertson only assumed the vehicle would be impounded and contents logged after he left the scene. That was clearly not his intended purpose. He did not produce an inventory or direct a search for that purpose. Whether the vehicle could have been searched for inventory before being returned to the registered owner is not the issue. The vehicle was clearly not searched on that basis on the facts of this case.

v) Conclusion on s. 8

[51] In conclusion on s. 8, I find that the vehicle search was not authorized by law, as it fell outside the proper scope of search incident to arrest. The search was not connected to the arrest in the unique circumstances of this case. The s. 8 breach is established.

c) Section 10(b)

[52] The arresting officer has an obligation to provide the informational component of the right to counsel, and, if the arrestee asserts his or her choice to contact counsel, to hold off questioning and facilitate access.

[53] The Crown concedes a s. 10(b) breach in the delay of providing the informational component of the right to counsel.

[54] Mr. Martin was arrested and put in handcuffs at 10:52pm. When asked if he read the right to counsel at the time of arrest, Officer Robertson said he didn't think so and when asked why he said "…it must have just slipped my mind. We were more focused on trying to find out what was in the car". The right to counsel was provided after Mr. Martin was re-arrested on the additional *CDSA*, cannabis, and proceeds offences at 11:00pm. When the informational component was read, Mr. Martin immediately asserted the right and named private counsel.

[55] The delay was small when counted in minutes. The Crown observes that the pat down search before transport was a legitimate immediate concern and it took several minutes, leaving a remainder of less than 8 minutes of delay before the right to counsel was read. However, in the few minutes, a lot unfolded. It was not a matter of an officer taking too long to fill out paperwork or address any scene exigencies. In that brief period, the officers conducted what I have found to be an unlawful and unconstitutional search which had grave consequences for Mr. Martin.

[56] Compounding the failure to provide the right to counsel, Officer Robertson and his partner questioned Mr. Martin about the source of money found on his person and asked him to produce pay stubs. This questioning was not innocuous, it was incriminating. They suspected that the money had criminal origins and were investigating new offences, all before right to counsel was read.

d) Section 24(2)

[57] I have found breaches of s. 8 and s. 10(b).

[58] The drugs located in the car were found as a result of the s. 8 breach, and in very close temporal and contextual connection to the delay in providing right to counsel. I am well-satisfied that the drugs were therefore obtained in a manner that offended the *Charter* for the purposes of engaging s. 24(2): *R. v. Pino* 2016 ONCA 389, *R. v. Rover*, 2018 ONCA 745 at para 35.

[59] There is no issue with the test to apply when considering exclusion of evidence under s. 24(2): *R. v. Grant*, [2009] 2 S.C.R. 353, *R. v. Harrison*, [2009] 2 S.C.R. 494. I must consider the seriousness of the police conduct constituting the breach, the impact on the protected rights of the accused person, the public interest in a trial on the merits, and the overall balancing of the long-term repute of the administration of justice in admitting or excluding the impugned evidence.

i) Seriousness of State Conduct

[60] First, I find that the breaches considered together and in context of the overall conduct of the officers were serious and went well beyond inadvertence.

[61] I do not find good faith. Both officers expressed an improper and overly broad understanding of their power to search incident to arrest. The limits on search incident to arrest are very long standing, fundamental restrictions on police powers. While both officers referred to other potential reasons for searching the vehicle, for example inventory searches and safety searches, neither purported to have had those other lawful purposes in mind while searching. Both articulated their basis for search as search incident to arrest. Both said explicitly that the search incident to arrest that they conducted was not related to the arrest for theft and fail to comply. Both described a routine practice of automatically searching the driver's area of any person detained who occupies that seat: a practice which is inconsistent with constitutional standards, and suggests ongoing violations in other cases: *Rover*, at para. 40.

[62] In addition to a seeming lack of awareness of the scope of the search incident to arrest power, Officer Robertson displayed what I would characterize as a cavalier attitude towards constitutional rights. He did not know where in the vehicle he located the marihuana. He made no note of location and took no photos of the vehicle or items seized and did not request video or photos. He testified that the marijuana might have been in the console or the glove box or possibly elsewhere. He could not recall if he opened the glove box. He did not mention opening the trunk at all, though his partner Officer Collins noted that the trunk was open and he believed Officer Robertson searched it. The officer seized what he believed to be a substantial amount of cocaine and heroin, and yet did not think it pertinent to even record what was searched and how and where items were found.

[63] The cavalier attitude unfortunately extended to the right to counsel. No right to counsel was given when handcuffing and arresting Mr. Martin. While there can be reasonable delays to the provision in right to counsel in some circumstances, none were operative here. Officer Robertson gave no explanation as to why he delayed in providing the fundamental right to Mr. Martin other than to say it must have slipped his mind because he was so focused on searching the car.

[64] The right to counsel has been called a lifeline for detained persons, a right of fundamental importance and immense psychological value: *Rover*, at para. 45. It should not "slip the mind" of any officer, particularly one of long experience.

[65] When the right to counsel was read, Mr. Martin immediately identified a counsel of choice and said he wished to speak to his lawyer. He thereby triggered the implementation duties of the police. Officer Robertson did look up the number for counsel and called and left a message with the details of the arrest and requested a call back for Mr. Martin. That was done in a reasonable and timely way. However, Officer Robertson said that was the end of his concern for right to counsel. He remained at the station conducting duties and logging seized items but never checked to see if any consultation had been made.

[66] It is not enough to state that a message was left with counsel, with a call back number before the arresting officer turned his mind to other duties: *R. v. Noel*, 2019 ONCA 960.There is no allegation here that Mr. Martin did not speak to counsel. However, it is uncontested that the arresting officer who read right to counsel and began the process of facilitating contact did nothing to follow-up and ensure that the constitutional obligations were ultimately met. His conduct and his evidence displayed a lack of concern for and attention to important constitutional protections that should have been in the forefront in this type of interaction.

[67] The arrest and search and transport of Mr. Martin was very quick. Dynamic situations call for some leeway in police decisions as to the timing and nature of procedures including searches and access to counsel. But there was no reason for particular speed in this case. There was no concern with danger to anyone. Mr. Martin was cooperative and restrained. There was no concern with violence or weapons or other parties at the scene.

[68] The first factor strongly favours exclusion.

ii) Impact on *Charter*-Protected Rights

[69] The second factor is the degree of impact on the protected rights of the accused person.

[70] The Crown notes that if a reasonable expectation of privacy is found in the vehicle, it is very low on the scale of privacy rights, particularly here where the accused person is not the registered owner and is in fact being arrested for theft of the very vehicle searched. It is argued, therefore, that a s. 8 breach did not result in a significant intrusion.

[71] However, in this case, the s. 8 breach lead directly to the discovery of the drugs, which gave the officers the grounds for a level three search – which means that Mr. Martin was subject to an invasive bodily search at the station, without having had the opportunity to contact counsel or even to know he had the right to do so before the Jeep and bag were searched and drugs located.

[72] I find that the second factor is midway on the scale but slightly favours exclusion.

iii) Adjudication on the Merits

[73] The third *Grant* factor is the societal interest in adjudication on the merits.

[74] The evidence seized is real and reliable and essential to the prosecution, factors which tend to favour admission.

[75] A prosecution for possession of cocaine and fentanyl is of course extremely serious. But seriousness of the offence cuts both ways: *Harrison*, at para. 34. Society has an obvious interest in prosecuting serious offences, but people facing severe penal consequences may be those with the most at stake, and most in need of legal advice and the protections that the *Charter* guarantees.

iv) Conclusion on s. 24(2)

[76] In the overall balancing, the public confidence in policing and in the administration of justice would suffer if the court did not distance itself from the approach seen in this case: a statement of policy that did not account for any consideration of the privacy rights of individuals, or fundamental *Charter* guidelines, and a cavalier attitude towards the fundamental right of an accused person to have a lifeline of support through legal consultation. The compounding inattention to recording the details of the vehicle search and to ensuring meaningful implementation of Mr. Martin's right to counsel, add to the conclusion that the long-term repute of the justice system would suffer if the evidence were admitted.

3. Conclusion

[77] The application pursuant to s. 24(2) is granted. The evidence located in the search of the Jeep is excluded.

[78] Without the cocaine, fentanyl and scales, the Crown is left with two cell phones and currency on Mr. Martin's person. The money alone, without other evidence, has no link to commission of an offence. There must therefore be acquittals on the possession of controlled substances for the purpose of trafficking and the possession of property obtained by crime counts.

[79] This result is concerning for police and the community at large. I am well aware of the horrible destruction of lives that fentanyl in particular has caused in Durham Region and across the country. But our criminal justice system does not espouse fairness only when offences are minor or there is no tragedy or loss. Courts must continue to strictly guard constitutional protections for all and promote accountability for the exercise of state powers over individuals.

[80] The Crown invited the court to dismiss the count regarding possession of cannabis for the purpose of distribution. That count is dismissed, there being no evidence.

[81] The defence conceded that the driving count was established in the MTO records filed on consent and the evidence of Mr. Martin driving the vehicle. He will be found guilty of driving while suspended.

Released: September 25, 2020

Signed: Justice S. Magotiaux