COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Leonard, 2025 ONCA 63
DATE: 20250129
DOCKET: COA-23-CR-0581

2025 ONCA 63 (CanLII)

Nordheimer, Sossin and Copeland JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Travis Leonard

Appellant

Jeffery Couse and Jason Dickson, for the appellant

Samuel Greene, for the respondent

Heard: January 16, 2025

On appeal from the conviction entered on April 12, 2023 and the sentence imposed on May 29, 2023 by Justice Bernd Zabel of the Ontario Court of Justice.

Copeland J.A.:

[1] The appellant was charged with multiple counts relating to a loaded firearm seized from the trunk of a car that he was driving in the company of three male passengers. The Crown chose to proceed only on count #3, possession of a loaded prohibited or restricted firearm without being the holder of an authorization

or licence, contrary to s. 95(2) of the *Criminal Code*, R.S.C. 1985, c. C-46. The appellant was convicted and appeals from conviction.[1]

[2] The trial turned on two applications alleging breach of the appellant's *Charter* rights. The appellant alleged that his right to trial within a reasonable time, protected by s. 11(b) of the *Charter*, had been infringed. He also alleged that his right to be free from unreasonable search and seizure, protected by s. 8 of the *Charter*, was infringed by the search of the vehicle that led to the discovery of the firearm. The trial judge rejected both applications. The s. 11(b) application was heard and decided pre-trial. The trial proceeded blended with the s. 8 *Charter* application. Following the rejection of the s. 8 application, the parties filed an agreed statement of facts supplementing the evidence in relation to the firearm. The defence led no evidence on the trial proper, made no submissions, and invited the trial judge to convict.

[3] The appellant raises three grounds of appeal. It is only necessary to address the first ground to decide the appeal. The appellant argues that the trial judge's reasons on both *Charter* applications are insufficient to permit meaningful appellate review. He argues that, in substance, the trial judge's reasons on both applications simply adopted the Crown's submissions. The appellant

[1] The appellant's notice of appeal also seeks leave to appeal sentence; however, the sentence appeal was not pursued in the appellant's written or oral submissions.

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acknowledges that although a judge simply adopting the submissions of a party as their reasons is frowned upon,[2] it does not necessarily result in insufficiency of reasons. The appellant argues that in this case, the reasons are insufficient because the trial judge failed to make findings of fact on a number of contested issues; because where there were different threads to the Crown's arguments, the trial judge did not specify which ones he adopted as his reasons; and because many of the Crown's arguments before the trial judge were conclusory,[3] and thus, even if adopted, did not amount to sufficient reasons.

[4] The Crown acknowledges that it would have been "preferable" for the trial judge to have given detailed reasons on the *Charter* applications. However, the Crown argues that the trial judge's reasons on both applications, though brief, identified the reasons that led to the result and thus, permit meaningful appellate review.

[5] I would allow the appeal on the basis that the trial judge's reasons on both the s. 11(b) application and the s. 8 application are insufficient to permit meaningful appellate review. As noted above, this case turned on the disposition of the *Charter* applications. A new trial is required.

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[2] See *Cojocaru v. British Columbia Women's Hospital and Healthcare*, 2013 SCC 30, [2013] 2 S.C.R. 357, at paras. 45-50; *Attorney General of Canada v. Ni-Met Resources* (2005), 195 C.C.C. (3d) 1, 251 D.L.R. (4th) 355, at para. 26.

[3] Crown counsel on appeal was not counsel at trial.

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[6] Poor reasons, in themselves, do not justify appellate intervention. Appellate intervention is only warranted where the insufficiency of reasons prevents meaningful appellate review: *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at paras. 25-26, 28, and 55; *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at para. 15; *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at paras. 70, 74-75. An appellate court must take a functional approach to the sufficiency of reasons, and review a trial judge's reasons in the context of the record and the live issues at trial: *R.E.M.*, at paras. 16, 35; *G.F.*, at paras. 69-70. In short, to be sufficient, reasons must make clear what was decided and why, and the logical connection between the two: *R.E.M.*, at paras. 17-18.

[7] In this case, each *Charter* application raised multiple triable legal and factual issues. Each application required that the trial judge make findings of fact and apply the law on multiple issues.

[8] Unfortunately, the trial judge's reasons on both the s. 11(b) and s. 8 applications do not allow this court to know either the facts that he found or the legal analysis he applied to those facts. The substance of his reasons in both *Charter* applications was a boilerplate adoption of the Crown's submissions, supplemented with references to ranges of paragraph numbers in the Crown's written submissions, and in the case of the s. 11(b) reasons, also to pages of the transcript of the submissions. The rote nature of the reasons is clear from the extracts below from the s. 11(b) and s. 8 reasons.

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Section 11(b) reasons	**Section 8 reasons**
I find the Crown's written oral submissions to be fair, balanced factually and legally supported, persuasive and I adopt them. I find the defence analysis is not persuasive and I reject it.	I find the Crown's oral submissions and written submissions to be fair, balanced, supported in fact and law, persuasive and compelling, and adopt them; in particular paragraphs 5 to 16 of the respondent's materials. I find the defence submissions not persuasive.

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[9] The s. 8 application turned on whether the search of the vehicle, and in particular the search of the trunk, was lawful under s. 12(3) of the *Cannabis Control Act, 2017*, S.O. 2017, c. 26, Sched. 1 (the "*CCA*"). Although arguments were made at trial (and on appeal) about the initial grounds to trigger the right to search, I will focus on the scope of the search, as that was the most contentious issue. There was a contested legal issue at trial as to whether, assuming there were grounds to search the vehicle, the lawful right to search extended to the trunk. This argument turns on whether the scope of the right to search in s. 12(3) of the *CCA* is limited by the fact that the prohibition in the *CCA* (as it relates to the facts of this case) only applies to cannabis that is "readily available to any person in the vehicle": s. 12(2)(b). This is a question of statutory interpretation informed by the *Charter*.

[10] There are conflicting trial level decisions on this issue in Ontario in relation to s. 12(3) of the *CCA* and the analogous provision in s. 32(5) of the *Liquor Licence Act*, R.S.O. 1990, c. L.19 (the "*LLA*"): *R. v. Sappleton*, 2021 ONSC 430, at paras.

53, 57-62; *R. v. Byfield*, 2023 ONSC 4308, at paras. 110-120; *R. v. Houssein-Hassan*, 2024 ONCJ 290, at paras. 37-48; *R. v. J.F.*, 2015 ONSC 3068, at para. 64; *R. v. Graham*, 2018 ONSC 6718, at paras. 78-82, aff'd 2020 ONCA 692;[4] *R. v. Moulton*, 2023 ONCJ 140, 524 C.R.R. (2d) 168, at paras. 235-47. This court recently left this issue open in *R. v. Guerrier*, 2024 ONCA 838, at para. 19.[5]

[11] The trial judge's reasons do not specify or identify the legal analysis that led him to find that the search of the trunk was lawful and did not infringe s. 8 of the *Charter*. I am not persuaded by the Crown's submission on appeal that his reference to two cases relied on by the Crown make his legal analysis clear.

[12] Nor did the trial judge make any findings of fact on whether items in the trunk of the vehicle were "readily available" to any person in the vehicle, within the meaning of s. 12(2) of the *CCA*. The evidence was that the vehicle had a separate trunk (i.e., it was sedan-style and not a hatchback). It did not have a pass-through from the back seat to the trunk, but the back seats were capable of folding down. However, there were two passengers in the back seat. The trial judge made no factual findings about how easy or difficult it would have been to put the seats down

[4] *Graham* was affirmed by this court on other grounds. The s. 8 *Charter* issue regarding the scope of search under the *LLA* does not appear to have been raised on appeal.

[5] I do not read this court's decision in *R. v. Annett* (1984), 17 C.C.C. (3d) 332 (Ont. C.A.), leave to appeal to S.C.C. refused, [1985] S.C.C.A. No. 222, as deciding the issue of the scope of lawful search under the *CCA* or the *LLA*. The appeal in *Annett* was advanced on the basis s. 8 of the *Charter* was breached because the search under the *LLA* was used as a pretext for an unlawful search solely for criminal investigative purposes. This court rejected that argument based on the factual findings of the trial judge in that case. The appellant in *Annett* did not raise the issue of the scope of lawful search under the *LLA* provision (which is analogous to the *CCA* search provision).

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or whether it was even possible to do so with two passengers in the back seat. The Crown asks us to make the necessary factual findings on appeal. That is not our role.

[13] As the Supreme Court noted in *Sheppard*, at para. 55:

> Reasons acquire particular importance when a trial judge is called upon to address troublesome principles of unsettled law, or to resolve confused and contradictory evidence on a key issue, unless the basis of the trial judge's conclusion is apparent from the record, even without being articulated.

On the s. 8 issue in this case, the trial judge's reasons do not permit this court to engage in meaningful appellate review.

[14] I would add, in relation to the s. 8 issue, the trial judge did not conduct a s. 24(2) analysis, in the alternative. I do not fault him for not doing so. However, the Crown argues that if we were able to engage in meaningful appellate review of the s. 8 issue, and if we were to find a s. 8 breach, the evidence should not be excluded under s. 24(2). Given the insufficiency of the trial judge's reasons, in particular the absence of clear fact-finding, we simply do not have the factual findings necessary to consider the application of s. 24(2), if we were inclined to do so.

[15] The trial judge's s. 11(b) reasons are similarly insufficient. As with the s. 8 application, there were numerous live issues in the s. 11(b) application. Several time periods were contested as potential defence delay or waiver. However, the

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trial judge's s. 11(b) reasons do not allow this court to understand the basis on which the trial judge accepted the Crown's arguments.

- What was the factual basis upon which a finding of an informed waiver for a particular time period could be made? The transcript of the appearance where an agent for counsel for the appellant purported to give a waiver – when the appellant was not present in court – shows the agent stating that she did not have instructions on s. 11(b) waiver a mere 9 lines before she purports to give a waiver. And the waiver was given when trial dates had already been set some months previously[6] – prompting one to wonder how an informed waiver could be given when there was no delay.
- If the trial judge accepted the Crown submission that a second judicial pre-trial should be characterized as defence delay, what was the basis for that finding? The Crown's written submission on this issue was a conclusory assertion that the second judicial pre-trial was not necessary. There was an uncontradicted affidavit from the appellant's first counsel explaining why the second judicial pre-trial was required. He was not cross-examined and the Crown did not file any evidence on the s. 11(b) application.

[6] The matter returned to a practice court multiple times after the trial dates were set to address issues such as outstanding DNA analysis disclosure, a change of counsel for the appellant, and issues regarding the co-accused, whose charges ultimately were withdrawn. None of these issues affected the trial dates, which had already been set.

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- The trial judge was also critical of defence counsel for what he viewed as late disclosure to the Crown of the intention to bring a s. 11(b) application. It is not clear that the record supports this conclusion. But setting that to one side, the trial judge did not explain how this factor fit into the s. 11(b) analysis or whether it resulted in the deduction of any specific period of time as defence delay.

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[16] The trial judge's reasons fail to engage with these issues. There is a lack of explanation of both the facts found and the legal analysis for each contested area.

[17] As noted above, the jurisprudence on sufficiency of reasons directs that appellate courts must consider the sufficiency of a trial judge's reasons in the context of the record and the live issues at trial. This obligation does not extend to requiring the appellate court, as a prelude to appellate review, to effectively write the reasons that the trial judge failed to produce. Nor is it the appellate court's role to "perform its own analysis to resolve issues that the trial judge did not adequately address": *Penate v. Martoglio*, 2024 ONCA 166, at para. 23.

[18] The Crown argues that the reasons on the *Charter* applications met the sufficiency threshold in the context of a busy trial judge of the Ontario Court of Justice providing oral reasons. I do not agree.

[19] The jurisprudence recognizes that the time and workload pressures of trial courts are relevant context when an appellate court is assessing the sufficiency of

reasons: *Sheppard*, at para. 55. That contextual consideration does not shield reasons that foreclose meaningful appellate review.

[20] I am well aware of the heavy workload carried by judges of the Ontario Court of Justice. In recent years that workload has only increased. Amendments to the *Criminal Code* have resulted in more trials and trials for more serious offences in the OCJ, as well as increased procedural complexity of trials. Layered on top of those challenges is the systemic impact of delays due to the COVID pandemic. Most judges of the OCJ shoulder this burden admirably. They produce reasons that make clear to the parties and the public what was decided and why, and permit meaningful appellate review.

[21] The trial judge's reasons in this case do not meet that standard. To hold that the reasons in this case are sufficient would do a disservice to the parties to proceedings before the OCJ, to the public, and to the hard work of the other judges of the OCJ.

[22] I would allow the appeal, set aside the conviction, and order a new trial on count #3.

Released: January 29, 2025 "I.N."

"J. Copeland J.A."
"I agree. I.V.B. Nordheimer J.A."
"I agree. L. Sossin J.A."

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