POLICE ACADEMY
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JUSTICE INSTITUTE OF B.C.

A newsletter devoted to operational police officers across British Columbia.

NO NEGLIGENCE IN CUFFS SECURED TOO TIGHT

Forster v. Cineplex Odeon Corp. et al., 2001 BCSC 229

Two police officers responded to a call at a Cineplex Odeon Movie Theatre where ushers had forcefully evicted the plaintiff from the premises. As a result of this incident, the plaintiff sued the theatre alleging he was assaulted by the staff when evicted and the police for securing a set of handcuffs too tight. Officers attended and arrested the plaintiff, handcuffed him, and placed him in the rear of a police car in order to remove the plaintiff from the scene to calm him down. The officer stated the plaintiff was "ranting and exhibiting behaviour that was most bizarre". The plaintiff was driven from the theatre but later returned and reunited with his girlfriend and children who were at the theatre.

During the drive with the officer it had become apparent that the handcuffs on the plaintiff were too tight; a hand was turning blue. The Court found that the plaintiff had resisted being arrested and struggled while being handcuffed and that the handcuffs could not be easily double locked to avoid tightening. The handcuffs were either secured too tightly or tightened during the struggle. The transporting officer stopped to loosen the handcuffs but found that his key was not compatible because the handcuffs on the plaintiff belonged to the second officer involved in the arrest. The officer returned to the scene, obtained the other officer's key, and released the plaintiff. The elapsed time during the transport of the plaintiff was 20 minutes.

The plaintiff alleged that the defendant officer was grossly negligent in permitting the handcuffs to become too tight and for using handcuffs that any handcuff key would not release (the officer's handcuffs were older than the current issue; this explained why the keys were not interchangeable). In dismissing the plaintiff's action against the officer, Lowry J. held, at para. 22:

> [I]t is my view, that no case of negligence, let alone gross negligence, has been made out in any event. Given that [the plaintiff] struggled to the extent he did in resisting the handcuffs being secured, he cannot be heard to complain that they were placed on his wrists too tightly or that they were not double-locked to prevent them becoming tighter as he continued to struggle. And it simply cannot be said that [the defendant officer] was negligent because he did not decide to exchange the older handcuffs he was issued for newer handcuffs that had a universal key. It has not been established the decision was his to make.

Complete case available at www.courts.gov.bc.ca.

RECOGNIZING AN APPARENT MENTAL DISORDER

Part 5 of 6

Mr. Richard Dolman

The following notes are from an Internet website under development at the Justice Institute of BC to assist police to handle a psychiatric crisis and to promote wider understanding of mental illness. The project was initiated by the BC Association of Chiefs of Police Mental Health Committee, and is supported by a multi-agency group. Funding is from the Ministry of Health Services and the Justice Institute. Comments and suggestions to the author are welcome at: almond@direct.ca

Police need to make two key decisions when intervening under sec.28(1) of the *Mental Health Act*. Does the subject appear to have a mental disorder? Is the person's behaviour likely to endanger themselves or others? If both answers are yes, police may apprehend and transport subject to hospital.

However, the degree of apparent mental disorder must be more than eccentricity or odd ideas. It must cause serious impairment of the subject's ability to react appropriately to their environment, or to associate with others. A suicide attempt, violence or psychosis are examples. Here are some further points and a list of

examples.

Q: Police are not trained as psychiatrists. How can they recognize a psychiatric mental disorder? Officers should not attempt an exact diagnosis of any specific mental disorder. They do need to recognize abnormal behaviour or symptoms that indicate serious mental impairment and the need for psychiatric treatment. At the least, they can rely on instinct and on police experience to recognize behaviour well beyond the normal range. Examples of such indicators are listed below. One or more of these symptoms are typical in a broad range of psychiatric disorders.

Q: What is the psychiatric group of disorders? This group includes schizophrenia, bipolar (manic-depressive) disorder, severe forms of depression, and severe anxiety disorders. These – and a few others - can generate disabling or crisis episodes which respond to treatment with anti-psychotic medications. Police may encounter untreated cases in this group, cases made worse by non-compliance with medications, or by intoxication. The group does not include a "single diagnosis" of certain brain conditions like Fetal Alcohol Syndrome, developmental disorders, or addiction, nor mild cases of neurosis by themselves, but can include a "dual diagnosis" – with co-existing psychiatric disorder.

Q: What are the implications for police conduct? Human behaviour becomes more complex and more difficult to predict when it's a mixture of normal rationality with symptoms of a mental disorder. People in psychiatric crisis often have distorted perceptions, slow communication, and magnified fears, yet retain some rationality. The key for effective police conduct is to look for and work with that rationality, while being patient about the heavy static. When police approach, the person probably needs to feel non-threatened as well as getting offers of help. Police can encourage cooperation by treating the subject with normal respect and extra consideration, introducing themselves, speaking slowly in a firm but friendly manner.

Command or force may be the only way to apprehend a dangerous or violent subject who is also psychotic. But even then, for legal and humanitarian reasons, police are in a preventive role - protecting people from harm and restoring peace. This includes protection from self-harm as well as protecting others from harm.

Q: What to do when a crisis call looks like a false alarm? Usually, a psychiatric crisis is obvious in the subject's behavior or conversation, but some patients may not be willing or able to talk. Some "experienced" patients are able to mask symptoms temporarily. If police suspect a disorder is hidden, a few minutes of quiet conversation may tell. The *Mental Health Act* states collateral information (e.g. from family, partner or friends) is sufficient for police to decide that there appears to be a mental disorder and likely endangerment.

Typical indicators of psychiatric mental disorders (one or more of the following):

- COLLATERAL MEDICAL INFORMATION: Information received from informed sources about psychiatric symptoms or about previous history of psychiatric mental disorder diagnosis, treatment or hospitalization - usually reported by family, partner or friends. (Receiving this information is a high priority, after immediate safety issues.)

- PSYCHOSIS: Poor contact with reality; unaware or not reacting appropriately to surroundings or to others; generally irrational, bizarre behavior; hallucinations; delusions; belief in possessing special powers.

- DISTURBED MOOD: Manic (rapid, pressured speech; elated mood; extremely energetic); deeply depressed (sad, crying, distressed, hopeless); flat mood (fixed expression, no emotions, no joy); severe anxiety (fear, panic); sustained and unjustified suspiciousness; frequent irritability, anger, aggressiveness; feeling isolated or alienated.

- DISTURBED THINKING: Irrational or disordered thought and speech; disorganized; poor concentration, easily and severely distracted; confused about people, time, place; incoherent; impaired insight or judgment; poor problem-solving ability.

- DISTURBED BEHAVIOR: Disrupted occupational or social relationships; poor coping: out of synch with daily realities & routines; bizarre appearance, behavior, or speech (well outside the normal range); inappropriate laughter; neglected personal health and hygiene.

EVIDENCE ADMISSIBLE: STREET CHECK SUPPORTED BY ARTICULABLE CAUSE

R. v. Tammie, 2001 BCSC 366

The accused was charged with murder. During the *voire dire* to determine the admissibility of evidence, the Court examined the conduct of the officer during a street check of the accused before the body of the victim had been discovered. A uniformed police officer checked the accused, who was walking alone on a sidewalk, at 3:47 am. The accused was one block from the Newton Inn on King George Highway, which was the location where the murder victim was subsequently located. The officer testified he stopped the accused because of a "rash" of break and enters in the area late at night and he just wanted to "verify him". The officer exited his vehicle, approached the accused, and asked for his name, date of birth, address, and telephone number. The accused responded to the questions of the officer and the encounter only lasted for about two minutes. The officer returned to his vehicle and queried the accused on CPIC. As a result of the enquiry, the officer learned the accused was on probation, subject to a curfew and a prohibition against knives. The officer again approached the accused, initiated a general conversation about the probation order, and searched the accused. Nothing was found and the officer noted no signs of intoxication. The accused also told the officer that he had come from the Newton Inn (where the body of the victim was subsequently located).

The accused argued that the officer failed to provide the accused with his right to counsel during the first encounter. It was also argued his statement that he had just come from the Newton Inn and the officer's observation of his sobriety during the second encounter were inadmissible because the officer detained the accused and had failed to provide his s.10 *Charter* warning and the pocket search infringed his s.8 *Charter* right to be secure from unreasonable search and seizure. Respecting the first encounter, the Court (in finding the accused was not detained and thus s.10 *Charter* was not triggered) acknowledged that the police are entitled to ask questions of a person although the person is free not to answer. In addressing the second encounter and finding no violation of the accused's rights, Mackenzie J. stated, at para. 21-24:

> I find [the officer] had articulable cause to detain [the accused] the second time. [The officer] had learned from C.P.I.C. that [the accused] was on probation, subject to a curfew and was not to possess knives. The brief search can be justified as a reasonable search for safety reasons…
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> … [The officer] had articulable cause to detain [the accused] on the basis of the information from C.P.I.C. [The accused] was doubtless in breach of his curfew which added to the objective basis for articulable cause for the detention. The condition on [the accused's] probation order requiring him not to possess knives objectively justified [the officer's] subjective belief in a reason to briefly detain [the accused] - to check for knives in breach of the probation order.
>
> [The accused] apparently volunteered the explanation that he had just come from the Newton Inn, a well known pub, a couple of blocks away. An unwarned but volunteered statement is not obtained in violation of s. 10(b)….
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> In all the circumstances, including the fact it was 3:47 a.m. in an area of frequent breakings and enterings and the fact [the accused] was on probation subject to the two stated conditions, I cannot find the failure to provide [the accused] his s. 10(b) Charter warning renders inadmissible [the accused's] apparently volunteered statement that he had just come from the Newton Inn. That statement and [the officer's] brief evidence about [the accused's] state of sobriety is admissible in evidence. (references omitted)

Complete case available at www.courts.gov.bc.ca.

USE OF POLICE DOG NECESSARY & PROPORTIONATE

Mohamed v. Vancouver (City) Police Department, 2001 BCCA 290

The plaintiff appealed a dismissal of his lawsuit against the police for injuries he suffered after being apprehended by a police dog. A police canine officer received information that three men were involved in a robbery at a roadway intersection and attended the area shortly after receiving the information. The officer observed three men fitting the description walking in the area. The officer stopped his vehicle and got out

along with his dog. The three men were walking away from the officer and the officer called "stop police". One of the men stopped, and after a second call of "stop police" a second man stopped. The third man ran into a lane and the officer, after instructing the two men who stopped to lie down, set his police dog on the third man, who was the plaintiff. The police dog caught the plaintiff within a short distance as he was attempting to jump a small retaining wall. In the process, the plaintiff fell over the wall and broke his leg. The officer radioed for assistance while he was with the two men who had initially stopped. When back up arrived the officer ran looking for his dog, found the dog, and called the dog off. The plaintiff was arrested and an 18" blade was found at the base of the wall.

The plaintiff alleged that the officer used excessive force, which was neither necessary nor reasonable in the circumstances, in setting the dog after him and was also negligent in failing to follow his dog immediately upon deployment. The plaintiff further contended that because the plaintiff suffered "grievous bodily harm" as a result of the dog's use, the officer failed to comply with s.25(3) of the *Code*. The trial Court found that the plaintiff saw and heard the officer before the dog was released, a point the Appeal Court deemed critical to the analysis. The Appeal Court also found there was no evidence that the officer "intended to cause death or grievous bodily harm by releasing [the dog], or that he knew such consequences were "likely" to ensue". The officer's use of the dog in these circumstances were justified and the force used was "necessary and proportionate in the circumstances".

Complete case available at www.courts.gov.bc.ca.

NO-KNOCK SEARCH UNREASONABLE, BUT EVIDENCE ADMITTED

R. v. Lau, 2001 BCSC 346

Police drug squad members made an unannounced and "violent entry", as described by the judge, when they executed a search warrant by breaking down the accused's door with a battering ram, entering with their guns drawn, and forcing the accused to the floor; subsequently handcuffing him. In the basement police found a 252 plant marihuana grow operation. Police stated that they sought to surprise and gain quick control over the occupants by the no-knock tactic which was claimed to be safer for the police and anyone found inside. The prevailing drug squad policy at the time also reflected this view. Two veteran police officer's, testifying at the trial, suggested that "the execution of search warrants is one of the most dangerous of activities for police officers". The court found that "second guessing the police officers in the conduct of these inherently dangerous operations is inappropriate" and "it would be absurd to hold that police officers must annually monitor the numbers of suspects keeping weapons at grow operations before they can justify a policy formulated to meet genuine concerns about protecting the lives and safety of both searchers and home occupants". In admitting the evidence, the Court held:

> The warrant to search [the accused's] home was lawfully obtained. The unannounced battering down of the door was an inherently unreasonable beginning to the ensuing search, but having regard to the purpose for which the police chose not to announce their presence before breaching the door, admitting the evidence discovered during the search will not bring the administration of justice into disrepute. (emphasis added)

Complete case available at www.courts.gov.bc.ca.

CONSENT SEARCH INVALID: POLICE TRICK OCCUPANT

R. v. Adams (2001) Docket:C34243 (OntCA)

Police attended a rooming house and purportedly obtained the consent of the superintendent of the building, who shared a laundry facility with the accused, to enter the laundry room where the accused was ultimately arrested. A subsequent search of the accused resulted in the discovery of a controlled drug that led to the charges before the Court. At issue was the entry of the police into the laundry room to arrest the accused. If the entry to arrest was unlawful, the resultant search incidental to the arrest would be unreasonable as the arrest forms the foundation for such a search. The unanimous Court rejected the Crown's submission that the application of *R. v. Feeney* [1997] 2 S.C.R. 13, which generally prohibited warrantless entry into a dwelling

to affect an arrest, is restricted to a suspect's dwelling and held the rule applies equally to the dwelling of a third party. Secondly, the accused disputed the superintendent's consent to enter because the police tricked the superintendent by stating their purpose in entering was to investigate a noise complaint when their real purpose was to arrest the accused. Although not prohibiting third party permission, the Court held the consent of the third party (the superintendent of the rooming house) in this case was not properly informed because of the trick. Thus, the entry and search were unreasonable and the evidence was excluded.

Complete case available at www.ontariocourts.on.ca.

ODOUR & OTHER CIRCUMSTANCES JUSTIFIES ARREST

R. v. Schulz, 2001 BCCA 601

Local police received a fax from an outside agency requesting they inform the accused that Crown Counsel was not pursuing criminal charges for possession of marihuana against the accused (resulting from an earlier arrest) and that he was entitled to the return of his $4000 seized by police. No phone number was provided. A police officer attended the address specified in the fax and knocked on the door. A voice from within the premises stated "come-in" and the officer opened the door and observed the accused seated at the table. The accused immediately got up and closed the door behind the officer. The officer detected the odour of burning marihuana from within the residence, advised the accused of this, and that the residence would be searched as a result. The officer arrested the accused for possession of a controlled substance and advised the accused of his right to counsel. The officer called for back-up and a second officer arrived to assist. The back-up officer entered the residence to "ensure that no other persons were present in the premises and to preserve any evidence". The investigating officer then left the residence with the accused in custody and returned to the police office where he conducted investigative follow-up.

The back-up officer sat outside the accused's residence in his police vehicle, but because of heavy rain beating on the vehicle roof, traffic, and other noise, went back into the accused's residence and stood in the front room for approximately 30 minutes until the investigating officer arrived with a search warrant. As a result of the search, a quantity of marihuana and psilocybin was seized. At trial, the judge found the odour of the marihuana along with the other circumstances amounted to reasonable grounds justifying the arrest. With respect to the searches by the back-up officer, the first entry was justified as incidental to arrest while the second was unreasonable because it was made out of convenience and was therefore a trespass. The accused appealed to the BCCA arguing, among other grounds, the arrest was unlawful because there were insufficient grounds upon which to base the arrest, the incidental search was thus unreasonable, and the evidence should have been excluded. In finding sufficient grounds for arrest, Donald J.A. for a unanimous Court of Appeal:

> The odour that the officer detected, together with the behaviour of the appellant in quickly moving to exclude the officer once the appellant saw who was at the door, combined to provide a sufficient basis for the belief founding the arrest.
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> While it may be an available inference, as was argued, that the appellant was merely trying to exercise his right to privacy when he saw who was at the door the officer was entitled to draw the other inference that the appellant was attempting to conceal that he was smoking marihuana.
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> We were given an extensive canvass of the cases about the question of the sufficiency of odour of marihuana as a basis for an arrest or for a search warrant. I think, however, that while the circumstances of each case differ it cannot be said … that odour alone will never be enough.

With respect to the searches by the back-up officer the BCCA found the initial search to be incidental to arrest. However, the second search made out of convenience resulted in no evidence to be excluded. The appeal was dismissed.

Complete case available at www.courts.gov.bc.ca.

Note-able Quote

"It is not to be expected that a police officer is to be subjected to physical assaults in the execution of his duty for the protection of the public at large. Nor is it any part of the duty of policemen to adopt discretion in place of valour in the discharge of their duties in the many hazardous circumstances in which they have to act.

In my view it is of the utmost importance that this Court express its deep disapproval of the conduct of people in assaulting police officers, and it is our duty and responsibility to protect the police who carry on their function for the protection of all of us[1]." OntCA Justice Jessup

DOG BITE OF FLEEING YOUTH REASONABLE

R. v. M. & M., 2000 BCPC 185

A police canine officer received a call for assistance just past midnight where two suspicious males had been observed by other officers who were on special assignment in the area on another matter. The canine officer joined these two officers in their vehicle when two males were observed emerging from a lane. The canine officer left the vehicle with his dog and when he was about half a block from the two males the officer called out; "Vancouver police, stop or I will send my dog, don't move." One of the males ran towards a school grounds and the officer gave the command "take him". The dog apprehended the youth by biting onto his arm, and pulled the youth to the ground. The officer called to the youth, "show me your hands". When the youth complied, the dog released. The injured sustained by the youth were "more extensive" than the officer believed the youth had suffered. The accused argued that the sending of the dog after the youth amounted to excessive force and violated the youths constitutionally protected right to security of the person (s.7 *Charter*) because there were possibly a dozen police officers in the area (on the unrelated matter) which prevented the youth from fleeing. The trial judge however, was satisfied the officer was not aware of the positions of the other officers and found the force used to be reasonable:

> Section 25 of the *Code* provides some protection to police officers in taking reasonable steps in effecting an arrest of an individual suspected of having committed a criminal offence. Section 25 (1) provides that a police officer is justified, if he acts on reasonable grounds in doing what he is authorized to do as long as the officer uses as much force as is necessary for that purpose. It must follow that one such purpose exists when a police officer effects an arrest. I believe that a police officer has the protection provided in this subsection provided his action is reasonable. [The canine officer], in my view, made an honest determination that this youth was fleeing the scene to avoid being arrested and under these circumstances his action of releasing the police dog was not excessive.

The accused were convicted of break and enter. Complete case available at www.provincialcourt.bc.ca.

POLICE POSE AS LAWYER: TRICK NOT UNFAIR

R. v. Caster, 2001 BCCA 633

The accused appealed his murder conviction arguing the police ruse in posing as the accused's lawyer to elicit information from a witness was so egregious that it was an abuse of process and violated the accused's right to make full answer and defence (rights protected by s.7 and s.11(d) of the *Charter*). Two undercover police officers went to the home of an uncooperative witness and introduced themselves as associates of the accused from jail. The witness invited the officers into his bedroom where the officers told the witness that the accused was concerned he may testify against him and sought assurances he would not testify for the Crown. The officers told the witness that the accused's lawyer provided a list of questions and wanted the answers recorded on tape. The witness expressed concern that the undercover officers were police. To dissuade suspicion, the officers reiterated they were there on behalf of the accused's lawyer and pointed to a third undercover officer, posing as the lawyer, who was standing outside the witnesses apartment building (a visual prop to enhance the credibility of the two undercover officers).

The witness asked to speak to the lawyer (the third police officer standing outside the apartment) but was informed by the undercover officers that there was no reason to do that. The witness testified the officers looked like criminals and were intimidating. After speaking to the witness, the officers left and returned within ten minutes to arrest the witness for being an accessory after the fact (the witness had held the accused's backpack which contained a handgun, possibly the murder weapon). Following the arrest, police obtained a cautioned statement from the witness under oath. The accused contended that the "prosecution of the appellant contravened the community's sense of

[1] R. v. MacKay [1970] O.J. No. 920 (QL) (Ont.C.A.)

decency and fair play and thus undermined the integrity of the judicial process" and the "investigative technique [the lawyer ruse] used to obtain evidence from [the witness] constituted a serious abuse of state power, warranting judicial intervention by way of a stay of proceedings to protect the solicitor/client relationship essential to the administration of the adversary system of justice…". The BCCA disagreed and dismissed this ground of appeal, at para.32:

> I acknowledge the impersonation of defence counsel by a police officer may in some circumstances detract from the credibility of the defence bar, affect their ability to deal with witnesses, and thereby cause the adversary system to suffer. But I am not persuaded the appellant has established this to be one of those "clearest of cases" where the police conduct disentitles the Crown to a conviction.

The second ground of appeal, alleging the police conduct prevented the accused from making full answer and defence to the charge, was also dismissed. The Court found the "trial judge preserved basic procedural fairness for the [accused], while at the same time ensuring that the community's interest in the truth was satisfied". It must be noted that at the time when the police posed as the lawyer in this case, there was no offence. Since this case, the Legal *Profession Act* has been changed to prohibit this conduct:

s.15(4)(a) *Legal Profession Act*
A person must not falsely represent himself, herself or any other person as being (a) a lawyer, …

Complete case available at www.courts.gov.bc.ca.

PUBLIC INTEREST BROADER THAN s.495(2) FACTORS

Collins v. Brantford Police Services Board, (2001) Docket:C34623 (OntCA)

The plaintiff, who was arrested twice, sued the police and was awarded damages. The Brantford Police Services Board appealed the lower courts findings with respect to the first arrest and the Ontario Court of Appeal allowed the appeal. Police arrested the plaintiff for assault 3 hours after he had sprayed the 71-year-old victim with a water hose. There was a history of discord between the plaintiff and his neighbours and the victim feared for her safety. At trial, the court found the arrest was unlawful because the police did not comply with s.495(2) of the *Criminal Code*. The trial judge found he could not "conclude that the arrests were necessary to prevent the continuation or repetition of the offences or the commission of another offence". A Divisional Court dismissed an appeal. On further appeal, the OCA examined the proper interpretation of s.495 of the *Code* and the protection against arbitrary detention under s.9 of the *Charter*. The Court found the police had the requisite reasonable grounds to believe the accused had committed an indictable offence. Assault, being a hybrid offence, is an indictable offence for the purposes of arrest because it could be prosecuted by indictment. The second question was whether the limitations on arrest in s.495(2) made the arrest unlawful because the police failed to comply with them. The Court held the person arrested has the burden of proving the arrest was unlawful by satisfying the Court the police failed to comply with s.495(2):

> Thus, in the words of s.495(2), it was for the [person arrested] to establish that [the arresting officer] believed on reasonable grounds that the public interest, having regard to all the circumstances, could be satisfied without arresting him.

In this case, the plaintiff failed to meet this burden. Furthermore, the factors listed in s.495(2) are not an exhaustive list of what is to be considered by the officer:

> The decision mot to make a warrantless arrest for a hybrid offence must be made in the public interest having regard to all the circumstances. The factors enumerated in s.495(2)(d) are only some, albeit the most important, of the factors to which the officer's attention is expressly directed. The overriding consideration remains the public interest.

Complete case available at www.ontariocourts.on.ca.

SAFETY SEARCH UNREASONABLE

R. v. Slawter, 2001 BCPC 246

Two police officers on routine vehicle patrol in a downtown park area at 3 o'clock in the afternoon observed a man, among a group of men, appear to exchange something with another man. The officers knew the area as one

where drug transactions frequently occurred. The officer testified he was "fairly confident" that he had witnessed a drug transaction. Police stopped their car, exited, and approached the accused. The officer said he wanted to talk to the accused "…to get an idea of what was going on" and to determine if the accused was involved in a drug transaction. Because the officer knew that many people in that area carried knives or sharp objects, he asked the accused if he had any. The accused replied he had a knife and the officer then handcuffed and searched the accused for weapons. The officer testified he handcuffed people he deals with in the park for "officer safety" when people he is dealing with indicate they have something when asked about weapons or sharps. The officer further stated he was concerned with his safety because the accused said he had a knife. During the search, the officer found the accused's knife along with some cocaine. The accused was charged and argued the cocaine should be excluded as being the product of an unreasonable search. The Provincial Court judge found the circumstances did not justify the search, and therefore the search was unreasonable and the evidence was excluded:

> In this case the officer was not dealing with the commission of an offence, he was simply "fairly confident" that he had seen a drug transaction and he wanted to talk to the accused to get and idea of what was going on. Essentially the officer decided to go fishing for additional information. At the initial stage of his inquiry the officer did not have sufficient grounds to justify detaining or arresting the accused for possession of a controlled substance or for possession for the purpose of trafficking. At best, what the officer had seen was suspicious behaviour by the accused. Suspicion, however, is not a substitute for evidence. The officer, nonetheless, had the right to speak to the accused. He also was entitled to ensure that he could do so safely. Assuming that the officer was only concerned about his personal safety and that of his partner it was appropriate to ask the accused if he had a weapon or anything sharp with him. When the accused replied that he had a knife the officer was then entitled to ask the accused to turn the knife over to the officer. Taking all possible precautions however, the officer decided to handcuff the accused and search him to obtain the knife rather than ask him to surrender or to disclose the location of his knife. He obviously had detained the accused when he placed him in handcuffs. However in that condition the accused no longer presented any personal safety threat to either of the officers.
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> The officer did not have reasonable or probable grounds to search the accused for evidence of a possible drug transaction because the circumstances observed by the officer would not legally support such a search. If the officer's purpose in searching the accused was to retrieve the knife the accused said he had in his possession then he had to do so in a reasonable manner. A reasonable search to ensure ones safety ought to be done in a manner that aims at determining where the knife is and then requesting that the knife be turned over to the officer or to retrieve the knife from where he was told it was located. If the accused had refused to tell the officer where the knife was or if he refused to turn the knife over to the officer, then the officer would be called upon to determine if he could legally continue to pursue his desire to conduct a search of the accused. The accused, however, was under no obligation to assist the officer and he ought not to have been searched for anything other than the knife, if at all, at the time he was searched in this case.
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> …[T]he officer in this case never did tell the accused why he was interested in wanting to talk to him. The accused co-operated with the officer when he was told to stop. He also answered the police officer's questions about [having] something sharp or having a weapon. He was never asked to produce the knife nor was he asked where the knife was located. He was immediately handcuffed and searched. There was no suggestion whatsoever that the accused physically presented any form of personal threat to either of the police officers.
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> … I am satisfied that the search and seizure undertaken by the arresting officer was an unreasonable search and seizure that violates section eight of the Charter of Rights and Freedoms. The circumstances surrounding the search do not justify the actions taken by the officer. This was a search that at least borders on being arbitrary. The circumstances observed by the officer do not justify the manner in which the accused was treated. The search was not justifiable and therefore was an unreasonable search. The officer was not operating under any kind of emergency circumstances nor was he in a position to arrest the accused unless he could obtain more evidence than what he had originally observed.
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> The results of searches of this type obviously support the opinion the officer had when he decided to determine what the accused had been doing. However the officer's actions were carried out in a manner that resulted in an unreasonable search and seizure and one that is not justified because of the circumstances under which it was conducted. The seriousness of the initial stop was minimal and the scope of the search was too broad. To admit evidence obtained in this manner would bring more disrepute to the administration of justice than to exclude it. (emphasis added)

Complete case available at www.provincialcourt.bc.ca.