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(Brandon Centre)
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COURT OF KING'S BENCH OF MANITOBA
(CRIMINAL DIVISION)

B E T W E E N:

HIS MAJESTY THE KING,	)	Grant Hughes,
	)	Nikki Boggs,
	)	for the Crown,
- and -	)	
	)	
MARISSA JEAN BENN,	)	Carley Mahoney,
	)	Keenan Fonseca,
(accused) applicant.	)	for the (accused) applicant.
	)	
	)	
	)	Judgment delivered:
	)	October 20, 2026

Restriction on Publication: No information regarding any portion of this *voir dire* shall be published in any document or broadcast or transmitted in any way before judgment is given in this case. This publication ban expired on November 5, 2026.

ABEL J.

INTRODUCTION AND BACKGROUND

[1] The accused is charged with manslaughter, contrary to s. 234 of the ***Criminal Code***, R.S.C., 1985, c. C-46 (the "***Code***"), in relation to the unlawful death of her domestic partner, Michael Demas (Demas).

[2] The accused provided a statement to Detective Constable Shingoose (Shingoose) of the Manitoba First Nation Police Service (MFNPS), on July 26, 2024 (the First Statement). Shingoose did not provide the police caution nor advise the accused of any of her rights pursuant to the ***Canadian Charter of Rights and Freedoms***, Part 1 of the Constitution Act, 1982, being Schedule B to the *Canada Act 1982*, (U.K.), 1982, c. 11 (the ***Charter***).

[3] The accused provided a further statement to Cpl. Walker (Walker) of the Royal Canadian Mounted Police (RCMP) on July 28, 2024 (the Second Statement) (the First Statement and Second Statement collectively referred to as the Statements). The accused was *Chartered* and cautioned and spoke to counsel before providing the Second Statement.

[4] The accused challenges the voluntariness of the First Statement and argues that the First Statement is not admissible due to the alleged ***Charter*** breaches. The Crown has conceded that the First Statement was not voluntary, but has not conceded there being any ***Charter*** breaches in relation to the First Statement.

[5] The accused further challenges the voluntariness of the Second Statement as well as its admissibility due to alleged ***Charter*** breaches, pursuant to the derived confessions rule.

ISSUES FOR DETERMINATION

[6] To determine the admissibility of the Second Statement, the following issues are to be determined:

a) Were the accused's ss. 10(a) and (b) ***Charter*** rights violated with respect to the First Statement;

b) Was the Second Statement voluntarily obtained;

c) Were the Statements obtained in a manner which infringed or denied a ***Charter*** protected right; and

d) If there is a finding that the accused's ***Charter*** rights were violated, should the Statements be excluded pursuant to s. 24(2) of the ***Charter***.

ANALYSIS AND DECISION

Derived confessions rule

[7] The admissibility of a second statement is determined by the derived confessions rule. The principles that govern the admissibility of a second statement when considered in conjunction with an inadmissible first statement were considered in ***R. v. I.(L.R.) and T. (E.),*** [1993] 4 SCR 504 [***I(LR)***] and ***R. v. Wittwer***, 2008 SCC 33 (***Wittwer***).

[8] The admissibility of the second statement which was preceded by an involuntary first statement involves a factual determination based on factors designed to ascertain the degree of connection between the two statements (see ***I(LR)*** at para 30).

[9] The derived confessions rule is a common law rule dealing with the voluntariness of confessions. In addition, s. 24(2) of the ***Charter*** provides its own formula for exclusion (See ***I(LR)*** at para 29).

[10] In determining whether a statement should be excluded under s. 24(2), a court must answer two questions. The first, as a threshold requirement, asks whether the

statement was "obtained in a manner that infringed or denied" a ***Charter*** right. Where this threshold requirement has been met, the Court proceeds to the second question, the "evaluative component", which asks whether the admission of the statement as evidence would bring the administration of justice into disrepute (see ***Wittwer*** at para 19 and ***R. v. McSweeney***, 2020 ONCA 2 at para 58 [***McSweeney***]).

[11] Where a person gives two statements and the first is taken in violation of s. 10(b) of the ***Charter***, the second statement cannot be considered in isolation. This is so even where the person is given rights to counsel between the two statements. Where a statement is followed by a second statement and that second statement does not involve a ***Charter*** breach, admissibility will be resolved under s. 24(2) of the ***Charter*** (see ***R. v. Harvey***, 2023 ONSC 1641 (***Harvey***) at para 68).

[12] To determine whether a subsequent statement will be excluded under the derived confessions rule because of the taint left by its involuntary and thus inadmissible predecessor, a trial judge must examine all the relevant circumstances to determine the degree of connection between the two statements. Some of the relevant factors include, but are not limited to the following:

- The time span between the statements;
- Advertence to the earlier statement during questioning in the subsequent interview;
- Discovery of additional information after completion of the first statement;
- The presence of the same police officers during both interviews; and
- Other similarities between the two sets of circumstances.

(see ***I(LR)*** at para 30).

[13] The application of these factors will render a subsequent statement involuntary if either the tainting features that disqualified the first continue to be present, or if the fact that the first statement was made was a substantial factor that contributed to the making of the second statement (see ***I(LR)*** at para 30).

[14] The inquiry required when the derived confessions rule is invoked to exclude a subsequent statement is essentially a causation inquiry that involves a consideration of the temporal, contextual and causal connections between the proffered and earlier statements. The inquiry is a case specific factual inquiry. The entire chain of events from the arrest of an accused to the end of the second statement must be considered (***Harvey*** at paras 70 and 71).

[15] In undertaking this analysis, the Court must be alive to whether the police were able to "sever" the connection and establish a "fresh start" (***McSweeney*** at para 58).

The First Statement

[16] The Crown has conceded that the First Statement was not voluntary, but has not made the same concession regarding any potential ***Charter*** breach.

[17] Given the manner in which the First Statement was obtained, there was a breach of the accused's s. 10 ***Charter*** rights.

[18] Shingoose testified that the accused was interviewed during the First Statement as a witness, not as a suspect. While the accused has raised arguments regarding this assertion, for the purposes of these reasons, it is not necessary for me to determine whether the accused was more than a witness, but actually a suspect during the course of the First Statement.

[19] Important for these reasons is that the accused, during the First Statement, admitted that the night prior to Demas being found deceased or the day of Demas being found, she had hit Demas with a broom.

[20] Early in the First Statement, the accused stated "I used physical violence as well. And it wasn't even that hard. I just hit him with my broom, that's all".

[21] During cross-examination, Shingoose acknowledged that he was aware such an admission was an admission of an assault, and possibly an assault with a weapon.

[22] Shingoose acknowledged during cross-examination that the accused's jeopardy had changed, as a result of her admission. As a result of that change in jeopardy, Shingoose acknowledged that he now knows that a mid-statement caution ought to have been provided to the accused, but was not done. Shingoose admitted that the accused ought to have been cautioned regarding her right to contact counsel, and her right to silence, and again, such caution was not provided. Such after the fact understanding by Shingoose is consistent with the Supreme Court of Canada's decision in ***R. v. Sinclair***, 2010 SCC 35 (at para 2).

[23] Shingoose acknowledged during cross-examination that he did not have such knowledge at the time of the First Statement, to have provided a mid-statement caution, due to a lack of training.

[24] Shingoose confirmed during cross-examination that on July 28, 2024, he discussed this issue with Sgt. Willcock (Willcock) of the RCMP, who assisted in both the investigation and the arrest of the accused on July 28, 2024.

[25] Shingoose later during the First Statement specifically asked the accused if anything physical happened between the accused and Demas, telling the accused "you gotta be pretty honest, okay".

[26] The accused stated that "I hurt him" and "I used that broomstick".

[27] In response to the second reference to the use of the broomstick in the First Statement, Shingoose again acknowledged that he should have cautioned the accused. Shingoose in cross-examination was specifically asked if he knew he was conscripting evidence from the accused, when he was asking about violence. Shingoose responded by stating that was not his intent, Shingoose wanting a true account of what happened. However, Shingoose acknowledged that he knew about violence between the accused and Demas, on the date of death of Demas, at the place of death of Demas.

[28] The accused's rights pursuant to s.10 of the ***Charter*** were violated on at least two occasions during the First Statement. Shingoose acknowledged that the accused ought to have been *Chartered* and cautioned after her first admission of hitting Demas with a broom. Despite that not happening, Shingoose asked the accused a second time about the alleged violence between her and Demas, again without any ***Charter*** or caution having been provided to the accused.

[29] As a result, the First Statement is not voluntary as conceded by the Crown. The accused's s. 10 ***Charter*** rights were violated during the First Statement.

The Second Statement

[30] The Second Statement was conducted on July 28, 2024, two days after the First Statement. The accused had been arrested for the murder of Demas. The accused was *Chartered* and cautioned prior to providing the Second Statement. The Second Statement was conducted by Cpl. Walker (Walker) of the RCMP.

[31] Of importance for my analysis, is the number of references by Walker to both Shingoose, and the first statement. Specifically, Walker says to the accused:

- I know you talked to Detective Shingoose too, earlier;
- And I know you gave a version of events to Detective Shingoose but I'd like to hear again, 'cause now, I know you mentioned to Detective Shingoose that you wanted to talk again when your head was more clear, right?;
- I just wanted to ask, I know when you talked to us, Shingoose, uh, Detective Shingoose, you had said that, uh, the broom, you had struck him with that to kind of keep him in line like kinda stop him from…; and
- Did you injure Mike?.

[32] Not only does Walker make reference to Shingoose and the First Statement, during which the accused's ***Charter*** rights were violated, but also specifically references the line of questioning during which the accused's rights were violated.

[33] In considering the factors as identified to determine the degree of connection between the two statements, I note the following.

[34] As to the time span between the Statements, there was an intervening two days. This timeframe is not determinative in the analysis, there being cases where only a few hours have elapsed between two statements, or several months.

[35] However, specific to this accused, the temporal connection is heightened given the intervening conduct by Walker.

[36] The First Statement is taken on July 26, 2024, the Second Statement on July 28, 2024.

[37] On July 27, 2024, Walker attended to the residence where the accused was staying. Walker confirmed in cross-examination that he attended to advise the accused that her residence was released as a crime scene. During that discussion, Walker confirmed in cross-examination that he told the accused that he would follow up with her tomorrow. This is in fact what happened when the accused was arrested and eventually interviewed by Walker.

[38] With respect to the advertence to the prior statement, this is important to my analysis, and ultimate determination. As indicated previously in these reasons, Walker makes reference to Shingoose several times during the Second Statement. Walker reminds the accused that she told Shingoose she wanted to talk when her head was "more clear". As argued by the accused, such a statement by Walker clearly links the two statements, as if the Second Statement is a continuation of the First Statement.

[39] Perhaps most importantly in the consideration of the advertence to the prior statement, is the reference by Walker to the earlier line of questioning that Shingoose

acknowledged was a breach of the accused's ***Charter*** protected rights and were in fact a breach of the accused's rights.

[40] Shingoose acknowledged that he discussed the importance of re-cautioning a suspect during a statement with Willcock as part of the arrest briefing, although Willcock could not recall same. Walker testified that Shingoose and Willcock were part of the arrest briefing, after the accused had been arrested and lodged in a cell.

[41] Walker confirmed in cross-examination that prior to the Second Statement being taken, he listened to the transcript of the First Statement on two occasions, and was aware of the comments by the accused regarding her and Demas arguing, and that the accused had hit Demas with a broom.

[42] Walker confirmed in cross-examination that when he listened to the First Statement, he had no concerns regarding ***Charter*** compliance or the voluntariness of the accused's statement. Walker confirmed in cross-examination that if he did have some concerns, he could have not referenced the First Statement.

[43] Despite Shingoose now acknowledging that the accused's rights were breached during the First Statement, Walker had no such concerns either while conducting the First Statement, or during his testimony.

[44] As a result of there being no attempt to avoid reference to the First Statement during the Second Statement, the Second Statement makes two references to the specific line of questioning, the use of the broom by the accused, that results in the First Statement not being ***Charter*** compliant.

[45] As to the discovery of additional incriminating evidence, there is no indication of such additional evidence. Walker did confirm in cross-examination that the First Statement was relied upon to obtain a warrant so as to search the residence for evidence, including the broomstick.

[46] As to the presence of a different or same police officer, Shingoose conducted the First Statement, Walker the Second Statement. Shingoose was the arresting officer, and did transport the accused from her residence to the RCMP detachment where the Second Statement was obtained.

[47] While there was evidence from Walker regarding limited resources and who was available to arrest the accused, from the accused's perspective such justification is irrelevant as the same officer who took the involuntary and non-***Charter*** compliant statement was the officer to arrest her, transport her, and be present in the detachment while the Second Statement was obtained.

[48] As to the similarities between the circumstances surrounding the taking of the Statements, physically the Statements are distinct. The First Statement was taken at the scene, in Shingoose's cruiser, while the Second Statement was taken at the RCMP detachment in Virden.

[49] The accused was *Chartered* and cautioned prior to the Second Statement, and had the opportunity to speak to counsel prior to providing the Second Statement. However, the fact that a caution or warning has been given in between the two statements is a factor to be considered but it is not determinative (see ***Wittwer*** at para 23).

[50] In considering these factors, I conclude that the Second Statement is sufficiently connected to the First Statement and is tainted by the First Statement. Given the repeated references to the First Statement during the Second Statement, the two interviews were part of one continuous transaction. There was no severance of the connection between the two statements, so as to result in a fresh start.

[51] The two statements are temporally, contextually and causally connected. Accordingly, the Second Statement was not voluntarily obtained.

[52] Further, in considering the threshold requirement, the First Statement and Second Statement were obtained in a manner that infringed or denied a ***Charter*** right.

Should both statements be excluded pursuant to s.24(2) of the Charter?

[53] As the threshold requirement has been met, the Court must determine the "evaluative component", which asks whether the admission of the statement as evidence would bring the administration of justice into disrepute.

[54] Given the determination that the two statements are temporally, contextually and causally connected, the s. 24(2) analysis must focus on both statements, it being artificial to consider the two statements separately (see ***Harvey*** at para 76).

[55] In determining 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 (see ***R. v. Grant***, 2009 SCC 32 (***Grant***) at para 71).

[56] With respect to the seriousness of the ***Charter***-infringing state conduct, the seriousness of the state conduct that led to the breach is to be evaluated. One of the main purposes for such inquiry is to preserve public confidence in the rule of law by carefully evaluating the gravity of the offending state conduct. ***Charter***-offending state conduct may fall along a continuum from trivial or minor violations which minimally undermine public confidence in the rule of law, to wilful or reckless disregard for ***Charter*** values, which would severely undermine such public confidence (see ***Grant*** at para 72 to 75).

[57] In this case, the lack of training or knowledge by Shingoose regarding his questioning during the First Statement cannot be seen or used as a justification to minimize the seriousness of the state conduct. There was a clear breach of the accused's ***Charter*** rights during the First Statement. Despite that clear breach, Walker makes further reference to that line of questioning during the Second Statement, acknowledging during cross-examination that he had no concerns regarding the conduct of the First Statement.

[58] There was an opportunity during the Second Statement for the police to distance themselves from the non-***Charter*** compliant behaviour. Rather, the police strengthen the connection and continue to make reference to that conduct and line of questioning.

[59] There was a serious breach of the accused's ***Charter*** protected rights, which factor favours exclusion.

[60] The second aspect of a s. 24(2) analysis is the impact of the ***Charter*** breach on the ***Charter***-protected interests of the accused. A determination must be made of the extent to which the applicant's protected interests were actually infringed (see ***Grant*** at paras 76 to 78).

[61] In ***Grant***, the Supreme Court used the example of infringements of the right to silence as a potential serious intrusion.

[62] In this case, the impact on the accused is significant. The accused was questioned during the First Statement after the questioning ought to have stopped so as to have provided the accused with her ***Charter*** and caution. The accused provided statements against her interest regarding her assaulting Demas with a broom. This line of questioning was revisited during the First Statement, and again referenced in the Second Statement.

[63] This evidence is not real evidence which exists independently of any questioning by the police, but rather, only exists as a result of police questioning, which in this case, was not ***Charter*** compliant. This factor favours exclusion.

[64] With respect to society's interest in adjudication of the case on the merits, society has a collective interest in ensuring that offenders are brought to trial and dealt with according to law (see ***Grant*** at para 79).

[65] The reliability of the evidence is important in this aspect of the inquiry. The court must consider whether exclusion of the evidence would extract too great a toll on the legal process. The seriousness of the offence is also a factor, but aspects of this consideration cut both ways (see ***Grant*** at paras 81, 82 and 84).

[66] The admission of unreliable evidence serves neither the accused's interest in a fair trial nor the public interest in uncovering the truth (see ***Grant*** at para 82).

[67] In this case, society's interest in adjudication on the merits favours exclusion. The reliability of the evidence is questionable, the First Statement not being voluntary nor being ***Charter*** compliant and the Second Statement being a continuation of the First Statement.

[68] Where the first and second inquiries make a strong case for exclusion, the third inquiry will seldom if ever tip the balance in favour of admissibility.

[69] There was a serious breach of the accused's ***Charter*** protected rights. It had a serious impact on the accused. Any societal interest in having the matter proceed on its merits does not result in the First Statement or Second Statement being admissible.

[70] Admitting the Statements would bring the administration of justice into disrepute. Accordingly, the Statements are excluded from evidence pursuant to s. 24(2) of the ***Charter***.

CONCLUSION

[71] The accused's rights pursuant to s. 10 of the ***Charter*** were violated with respect to the First Statement. The Second Statement was not voluntarily obtained. The Statements were obtained in a manner which infringed or denied a ***Charter*** right. The Statements are excluded from evidence and not admissible at the trial of the matter.

_____J.