# In the Court of Appeal of Alberta

**Citation: R v Gable, 2026 ABCA 375**

**Date:** 20261123
**Docket:** 2503-0067A
**Registry:** Edmonton

**Between:**

**His Majesty the King**

Respondent

- and -

**Steven Kirk Gable**

Appellant

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**The Court:**

**The Honourable Justice Bernette Ho**
**The Honourable Justice Jane Fagnan**
**The Honourable Justice Tamara Friesen**

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**Memorandum of Judgment**

Appeal from the Conviction by
The Honourable Justice M.H. Hollins
Convicted on the 30th day of October, 2024
(Docket: 220798516Q1)

**Memorandum of Judgment**

**The Court:**

## I Introduction

[1] The appellant appeals his conviction by a judge for possession of carfentanil for the purposes of trafficking (s 5(2), *Controlled Drugs and Substances Act*, SC 1996, c 19), and for resisting arrest and failing to comply with a release order (ss 129(a) and 145(5)(a), *Criminal Code*, RSC 1985, c C-46).

[2] The appellant argues the judge erred in failing to exclude evidence under s 24(2) of the *Charter* despite having found the appellant's s 8 right was breached.

[3] The appeal is dismissed for the following reasons.

## II Background

[4] A lone officer recognized the appellant with another male, and determined the appellant had an outstanding warrant. He approached the appellant and informed him that he was being arrested on the warrant. The appellant denied having an outstanding warrant. He had his hands in his pocket, was acting nervously, and began to try to manoeuvre himself behind the other individual. The officer was worried the appellant might be reaching for a weapon or attempting to run away. He immediately secured him in handcuffs. The officer searched the appellant's pockets and found a glass pipe and a cigarette case with a package of methamphetamine in his jeans pocket. He arrested the appellant for possession of a controlled substance and gave him a *Charter* caution.

[5] As the officer attempted to continue his pat down search over the top of the appellant's clothes, the appellant began to lean heavily into the truck to keep the officer from searching the right-hand side of his body. The officer reached around the appellant's right side and felt a hard round object near the appellant's groin. He believed this to be drugs. The appellant pulled away and tried to run. He dragged the officer a few feet before the officer was able to tackle and pin him to the ground while he called for backup. Several officers arrived soon thereafter.

[6] The first officer searched inside the appellant's pants and underwear and found a bag containing approximately 60 grams of carfentanil. In conducting the search, the officer undid the appellant's belt and the zipper on his jeans, pulled his jeans down an inch or two, and pulled outwards on the waistbands of the jeans and underwear. He then reached in and retrieved the ball of carfentanil with a gloved hand. This part of the search took one to two minutes. It occurred in a public place with other officers forming a perimeter around the appellant.

## III *Voir dire*

[7] Defence counsel conceded the search was incidental to arrest and the subsequent re-arrest was lawful, but argued the search was conducted unreasonably as it amounted to a strip search subject to the requirements set out in ***R v Golden***, 2001 SCC 83.

[8] The Crown argued that the appellant's struggling during a lawful search incident to arrest led the arresting officer to believe the appellant was trying to conceal drugs in his underwear and raised concerns about the potential loss of evidence or ingestion of a dangerous substance, constituting exigent circumstances.

[9] The justice rendered an oral decision. She determined the search inside the pants clearly fell within the definition of a strip search as it involved the rearranging of clothing, enabling the visual inspection of the appellant's groin area and penis. She described the search as essentially visual, finding the only contact with the appellant's genital area might have been as the drugs themselves were retrieved.

[10] She determined many of the factors listed in para 101 of ***Golden*** weighed in favour of finding the search to be reasonable:

(a) all officers involved and present for the strip search were male;

(b) the presence of additional officers was necessary following the appellant's attempt to flee;

(c) the appellant was never fully undressed and the search was conducted quickly and safely;

(d) the officers were mindful of the appellant's privacy and shielded him from onlookers; and

(e) minimal contact with the appellant's body occurred when the drugs were retrieved and the search was otherwise essentially visual.

[11] However, the justice noted the searching officer did not engage in proper record keeping or note taking for a strip search, nor did he activate his VICS equipment before engaging with the appellant. She did note another officer's car camera video captured the events.

[12] She did not put much weight on the failure to obtain a prior authorization from a supervisor given that the officer conducting the search was acting in a supervisory capacity at the time.

[13] She ultimately concluded it was the decision to conduct the search in public that rendered it unlawful.

[14] Regarding exigent circumstances, she accepted the appellant's behaviour may have been alarming or provided cause for concern. However, once the additional officers arrived, the appellant was adequately contained or secured and posed no immediate danger, and there was no reasonable concern in the circumstances that he might still have a concealed weapon. Nor was there any risk of destruction of evidence. Finally, no adequate reason was given as to why the appellant could not be transported to the detachment, which was approximately 5 to 7 minutes away, for the search to be completed there.

[15] The justice then turned to whether exclusion of the evidence was appropriate under s 24(2). She cited the applicable test for exclusion under s 24(2) established in ***R v Grant***, 2009 SCC 32 as summarized in ***R v Choi***, 2021 BCCA 410 at paras 60-62.

[16] The justice found the evidence was connected to the breach.

[17] She found the "degree of the breach" was minimal, noting: no one who was not involved in the arrest and search could have seen the extent of the search; any public spectators likely did not even know that a strip search had been conducted; only the searching officer looked inside the appellant's pants; the search was done quickly and safely; the clothing was moved to allow a visual search, but no clothing was removed; and the officers acted in good faith, simply making a different assessment of exigent circumstances.

[18] The justice found the breach was serious and it had an impact on the appellant's rights due to the reasonable expectation of privacy in one's bodily person, particularly in one's private parts.

[19] Regarding public interest, she held that while most people would likely agree that privacy rights are important to uphold, the public also has an interest in seeing criminal cases tried on their merits, particularly in a case involving such a pervasive and lethal substance as carfentanil. She determined the public would consider the exclusion of the carfentanil evidence to be "a travesty" given the damage the drug is wreaking on society. The drugs were hard evidence, very reliable and critical to the Crown's case. She determined that a reasonably informed member of the public would conclude that the exclusion of this kind of evidence would bring the administration of justice into disrepute when weighed against the relatively minimal infringement of the appellant's rights.

[20] The justice concluded the strip search of the appellant ought to have been conducted at the station and there was no compelling reason for it not to have been done there, but the searching officer had reasonable grounds to believe that the appellant was concealing drugs. The officers took steps to preserve the appellant's privacy and to secure him and conduct a search as quickly

and safely as the appellant himself would allow. Despite the s 8 breach, her consideration of the factors relevant to s 24(2) led her to conclude the exclusion of the evidence would bring the administration of justice into disrepute.

## IV Standard of Review

[21] An appeal court may only intervene with a s 24(2) decision regarding exclusion of evidence where the trial judge made an incorrect determination on a question of pure law, failed to consider or apply the appropriate factors, or made a palpable and overriding error of fact or mixed fact and law: ***R v Beaver***, 2022 SCC 54 at para 118; ***R v Blyan***, 2025 ABCA 213 at paras 20-21.

[22] Where a trial judge commits a reviewable error in the s 24(2) analysis, it is open to the appeal court to consider the analysis afresh, accepting the findings of the trial judge that are untainted by the error: ***R v Carbert***, 2026 ABCA 314 at para 160 and cases cited therein.

## V Analysis

[23] The ***Grant*** framework for a s 24(2) assessment requires a balancing of three lines of inquiry: (a) the seriousness of the *Charter*-infringing state conduct; (b) the impact of the breach on the accused's *Charter*-protected interests; and (c) society's interest in the adjudication of the case on its merits.

### A Seriousness of the *Charter*-infringing conduct

[24] The appellant submits the justice should have placed more weight on the fact the officer did not consider obtaining an authorization for the search as evidence of a lack of good faith, submitting that a supervisory review is intended to prevent unnecessarily intrusive searches.

[25] The justice explained why she did not put much weight on the failure to obtain a supervisor's approval in the circumstances. The searching officer testified his supervisor was on leave that day and he was acting as the direct supervisor of the Grande 2 Prairie Crime Reduction Unit at the time. His understanding of the strip search policy is that the general duty constable would be the one to authorize the search. The appellant has not pointed to evidence to the contrary.

[26] The appellant says the justice misapplied the first branch of the ***Grant*** analysis in finding that the "actual degree of the breach here was minimal".

[27] The definition of a "strip search" encompasses a wide spectrum of conduct, being anything from shifting of clothing to a full strip and cavity search. The justice's findings regarding the "degree" of the breach relate to the nature and scope of the specific activity in this case and the

manner of conducting the search, addressing relevant ***Golden*** factors. Despite having situated the conduct on the less intrusive end of the spectrum of strip searches and having found the concerns in ***Golden*** were somewhat assuaged in the circumstances, she nevertheless did find the breach to be serious.

[28] The appellant further argues the finding that the searching officer acted in good faith contradicted the justice's dismissal of the officer's assertion that he was conducting a search for weapons. He also submits the justice should have attributed more weight to the fact that the law on strip searches has been well established for decades.

[29] The justice found the officers were neither ignorant nor dismissive of the law and policies on strip searches but she determined they had made an incorrect exigent circumstances assessment. She found the officers' concerns were not disingenuous or fanciful and were grounded in the appellant's behaviour in resisting the search incident to arrest, which reasonably heightened concerns. She agreed the appellant's refusal to cooperate with the officer was alarming and could have signalled a danger to the officer, the appellant himself, or to others. She was of the view that those concerns were mitigated by the arrival of other officers and she ultimately held that concerns about a concealed weapon or loss of evidence were not reasonable.

[30] A "good faith" finding is only available where the police conducted themselves consistently with what they subjectively, reasonably, and non-negligently believed to be the law: ***R v Le***, 2019 SCC 34 at para 147. An officer's honest but unreasonable belief about his authority does not support a "good faith" breach: ***R v Del Corro***, 2019 ABCA 156 at para 68.

[31] The justice erred in finding the officers acted in good faith, given her conclusion that their assessment of exigent circumstances was not objectively reasonable.

[32] However, just as an absence of bad faith does not amount to a positive finding of good faith, the absence of good faith does not equate to bad faith: ***Del Corro*** at para 65. Extenuating circumstances, such as the need to prevent the disappearance of evidence, may attenuate the seriousness of police conduct that results in a *Charter* breach: ***Grant*** at para 75. The justice was entitled to take into account the circumstances giving rise to the officers' concerns. She did not err in failing to find willful or reckless disregard of *Charter* rights in the circumstances.

[33] Despite the erroneous finding of good faith, the justice found the breach was serious.

### B Impact of the breach on the accused's *Charter*-protected interests

[34] As for the second branch of the test, the appellant says the justice only generally recognized the impact of such a breach on his *Charter*-protected interests; she did not account for the fact that

the officer engaged in a visual inspection and actual physical contact with the appellant's genitals in removing the drugs, nor that the appellant would not have known whether people in the trailer park could see him.

[35] The justice recognized the significant impact of a breach of the appellant's legitimate expectations of privacy in his body, noting this is the very reason why the law imposes safeguards in relation to strip searches. She had recounted the details of the search and was not required to repeat them. The appellant did not testify in the *voir dire* and there was no other evidence regarding his subjective feelings. She did not err in her assessment of the impact of the breach on the appellant's interests.

### C Society's interest in the adjudication of the case on its merits

[36] The appellant takes issue with the analysis under the third branch of the ***Grant*** test, particularly the justice's reiteration of the officers' "good faith" and her characterization of the breach as a "relatively minimal infringement of the accused's rights". The appellant submits the justice allowed the seriousness of the offence and the ongoing opioid crisis to overwhelm the public interest analysis. He argues considerations of the third branch should not be permitted to simply trump the first two branches; where the first two factors strongly favour the exclusion of evidence, the evidence must be excluded in the long-term interests of the repute of the administration of justice.

[37] We have found the justice erred in finding the officers acted in good faith, and this was a factor in her characterization of the infringement as relatively minimal. It is open to us to consider the analysis afresh, accepting the findings of the trial judge that are untainted by the error.

[38] On a fresh analysis in this case, we are of the view that the evidence should not be excluded. The justice's finding that the search was unlawful was based on the location of the search, not the fact that it was conducted at all, nor the manner in which it was conducted. While her findings regarding the officers' conduct did not support a finding of good faith, they did support a determination that there was an absence of bad faith. She did not err in noting the drugs were hard evidence, very reliable and critical to the Crown's case. Nor did she err in her assessment of the public's extremely strong interest in a trial on the merits of a case involving a large amount of carfentanil.

[39] Where the cumulative weight of the first two s 24(2) factors is overwhelmed by a compelling public interest in admitting the evidence, the administration of justice will not be brought into disrepute by its admission: ***Beaver*** at para 134. This is such a case. Despite the error, a fresh analysis leads to the same outcome.

## VI Conclusion

[40] The appeal is dismissed.

Appeal heard on November 5, 2026

Memorandum filed at Edmonton, Alberta
this 23rd day of November, 2026

Ho J.A.

Fagnan J.A.

Friesen J.A.

**Appearances:**

D. MacCannell
S. Ross
for Respondent

A. Seaman
for the Appellant