

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.

[REDACTED]

**ORAL RULING RE DELAY APPLICATION
OF
THE HONOURABLE JUDGE P. NIJJAR**

[REDACTED]
[REDACTED]

Federal Crown Counsel:

T. Corsi

Counsel for the Accused:

C. Massey and R. Neary

Place of Hearing:

Colwood, B.C.

Date of Ruling:

April 10, 2026

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[1] THE COURT: [REDACTED] [REDACTED] [REDACTED] stands charged with multiple counts, seven in total, of possession for the purpose of trafficking under s. 5(2) of the *Controlled Drugs and Substances Act*, on Information 24327-1. Each of the seven counts includes a different controlled substance, namely, cocaine, methamphetamine, fentanyl, MDMA, GHB, hydromorphone and ketamine. Included in the same Information are five weapons-related charges laid under the *Criminal Code*. The date of the alleged offences is on or about April 25th, 2024, in the City of Colwood, here in British Columbia. The Information was sworn on February 26th, 2025.

[2] This is my decision on a pre-trial application made on behalf of Mr. [REDACTED] on March 13th, 2026, in which he seeks a judicial stay of proceedings under section 24(1) of the *Canadian Charter of Rights and Freedoms*. His counsel argue that the grounds for the judicial stay is a breach of his right to be tried within a reasonable time, pursuant to section 11(b) of the *Charter*.

[3] The Supreme Court of Canada in deciding *R. v. Jordan*, 2016 SCC 27, established a ceiling of 18 months in matters such as this one, where trial in provincial court is elected, as between the date of the charge and the last actual scheduled day of trial.

[4] The defence in this matter say that as currently scheduled, the amount of time as between the laying of the charges and the last day of the trial proper, which is scheduled to be November 13th, 2026, falls approximately 80 days over the presumptive *Jordan* timeline of August 26th, 2026.

[5] The Crown have calculated the time as 77 days.

[6] Defence also submit that none of the delay within that period is attributable as defence delay. In their submissions they refer to defence delay as explained at paragraphs 63 through 66 in *Jordan*. They say that the delay here results from issues relating to extreme Crown delay in providing disclosure, as well as issues relating to the scheduling of this matter.

[7] The Crown takes the position that any delay in this matter results from three sources. First, defence delay which should account for 21 days; second, deliberation delay that amounts to 88 days; and third, scheduled court breaks of either 109 days where weekend and statutory holidays are included or 69 days in the alternative. With all of those sources and timeframes considered the Crown say that the hearing of this matter falls under the presumptive ceiling in *Jordan*.

[8] In the alternative, Crown say that the complexity of this matter rebuts the presumption of unreasonableness of any delay that is in excess of the 18 month *Jordan* ceiling. The issue I must decide is whether Mr. [REDACTED] s. 11(b) right has been breached based on the application of the 18 month ceiling set out in *Jordan* and his right to be tried within a reasonable time.

[9] In order to determine that issue, I must consider the facts and the applicable law in terms of assessing whether there is a delay, how any such delay should be characterized or attributed, and finally, if applicable, if Crown has met their duty in establishing complexity as a rebuttal to any delay over the *Jordan* ceiling.

[10] I will start with a brief overview of the background relating to these proceedings. I will then consider the facts and applicable law.

[11] On April 25th, 2024, police executed a search warrant at Mr. [REDACTED] residence. Controlled substances and weapons that form the basis of the charges before the court were seized. On February 26th, 2025, the Information was sworn. Initial disclosure was provided to defence counsel on April 25th, 2025, with further disclosure being provided on June 4th, June 20th and September 2nd, 2025. The Informations to Obtain or ITOs, one relating to the residence and eight others, were provided to defence on June 20th, 2025.

[12] At court appearances on June 26th and July 17th, 2025, defence counsel sought adjournments to review disclosure. On July 24th, 2025, there was an appearance before now retired Judge Gouge for direction. The Crown took the position that defence should be prepared to proceed with arraignment and defence sought more time to review disclosure prior to arraigning. Judge Gouge decided that the defence was entitled to an adjournment and the matter was adjourned to August 21st, 2025.

[13] At the appearance on August 21st, defence requested a further adjournment and another appearance for direction by a judge was scheduled for September 12th, 2025. Leading up to the appearance on August 21st, 2025, defence had requested additional disclosure from Crown as well. Judge Gouge presided over the appearance on September 12th, 2025. Based on my review of the transcript of that proceeding it is clear to me that detailed submissions were made to Judge

Gouge about the nature and substance of the Crown disclosure requested by defence. Judge Gouge commented that he understood why defence would want to see the disclosure before making an election or entering a plea. Quoting from His Honour now, from the appearance on September 12, 2025:

Delay seems to be with police. The obligation to disclose belongs to the Crown and police are agents of the Crown, so the delay here seems to lie at the feet of the Crown.

[14] A consent arraignment form was filed on September 22nd, 2025. Following arraignment a pre-trial conference was held on October 31st, 2025, where general timelines were agreed upon with respect to estimating court time for anticipated pre-trial applications and for the trial proper. Subsequent appearances were scheduled for both direction from the court and at the request of the court. During the period from December 30th, 2025, until January 19th, 2026, court dates for the pre-trial matters and for the trial proper were scheduled, with the trial proper now set to conclude on November 13th, 2026.

[15] In *R. v. Jordan*, the Supreme Court of Canada established a framework for determining whether delay violates s. 11(b) of the *Charter*. Counsel have provided a number of helpful cases that articulate the *Jordan* framework and methodology. The framework was first summarized in *Jordan* at paragraph 46, where the court writes that:

At the heart of the new framework is a ceiling beyond which delay is presumptively unreasonable.

And at paragraph 47:

If the total delay from the charge to the actual or anticipated end of trial ... *exceeds* the ceiling, then the delay is presumptively unreasonable. To rebut this presumption ... Crown must establish the presence of exceptional circumstances. If it cannot, the delay is unreasonable and a stay will follow.

[16] Based on the position of the Crown, here there is a delay of 77 days from the date of the charges to the expected end of trial.

[17] In terms of the *Jordan* framework, the next step is to subtract any defence delay from the total delay and the result is what is referred to as net delay. The Crown says that 21 days of delay should be attributable as defence delay related to missed emails and IAR appearances in December of 2025.

[18] Defence's position is that I should consider whether there was any delay that actually resulted from this in terms of scheduling. They take the position that it was based on dates that they provided to the court that led to this matter being scheduled to commence in April of 2026, rather than May of 2026, the latter of which is the period within which the Crown initially provided available dates.

[19] I agree with defence's position here. The miscommunications from December of 2025, and missed court appearances did not result in actual delay in scheduling these matters, and accordingly I am not attributing it as defence delay.

[20] I will consider next the Crown's position that the scheduled court breaks of either 109 days or 69 days should be included in calculating the amount of delay or net delay. I have reviewed the correspondence between counsel, their respective offices and the court, as well as authorities provided by Crown, including *R. v. Ali*,

2024 BCSC 2099, and *R. v. Alkhalil*, 2023 BCSC 1668. It is not clear to me that either Crown or defence counsel agreed to court breaks in this case, such that there could be an implied waiver for me to include in terms of calculating the net delay here. Justice Maisonville in *R. v. Alkhalil*, includes helpful language in deciding to attribute court breaks into their calculation of delay in that matter. In paragraph 45 the Crown argued that scheduled days out of court were agreed to by all parties. All parties should be deducted as a waiver of the delay. At paragraph 46 of the decision, the Justice writes:

...the Crown says that 25 days should be counted as waiver on the basis that all of the parties agreed not to proceed on those days.

And then at paragraph 48 of the same decision [as read in]:

There is very little case law on how to calculate breaks that have been agreed to by parties as part of the trial schedule...

[21] The Crown also directed me to *R. v. Potter*, 2020 NSCA 9, wherein a trial judge found that the defence had implicitly waived delay caused by breaks that all parties had agreed to. This resulted in a deduction of three months in that matter.

[22] Reading in part from paragraph 61 of *Jordan*:

Defence delay has two components. The first is delay waived by the defence... Waiver can be explicit or implicit, but in either case, it must be clear and unequivocal. The accused must have full knowledge of his or her rights, as well as the effect waiver will have on those rights. However, as in the past, "[i]n considering the issue of 'waiver' in the context of s. 11(b), it must be remembered that it is not the right itself which is being waived, but merely the inclusion of specific periods in the overall assessment of reasonableness"...

[23] Hereafter discussing time estimates for pre-trial matters and the trial proper and then providing available dates, I find that counsel were notified by the court of the scheduled dates for pre-trial matters, decision and then dates for trial. I see no record of discussions where breaks in court were sought or were agreed upon by counsel. Therefore, I am not including time for court breaks in considering delay in this matter.

[24] Moving forward then to the matter of whether deliberation day, meaning whether the time included in relation to mid-trial deliberation by the court or the time between pre-trial evidence being heard and decisions being provided by the court on those pre-trial matters, should be calculated separately from or included in the 18 month *Jordan* ceiling.

[25] The Crown have accounted for 88 days of deliberation delay in their submissions. Defence take the position that while there is a decision of this court in *R. v. Stogrin*, 2021 BCPC 313, decided in 2019, that found that mid-trial deliberation time falls outside of the 18 month *Jordan* ceiling, there are subsequent appellate level decisions that have found that such time falls within that ceiling.

[26] In the Manitoba Court of Appeal in *R. v. Flett*, 2024 MBCA 99, at paragraph 53, the court considered the question of how to allocate mid-trial deliberation time and quoted from the Ontario Court of Appeal in from *R. v. Mengistu*, 2024 ONCA 575, where:

... the Ontario Court of Appeal concluded that "judicial deliberation ... for interlocutory decisions should generally be considered as already included within ... existing *Jordan* ceilings" (at para 27). Writing for the Court,

Monahan JA articulated three reasons for this conclusion: (1) *Jordan* implicitly accounted for judicial deliberation time for interlocutory decisions, (2) excluding judicial deliberation time for interlocutory decisions "would run counter to *Jordan*'s emphasis on certainty and predictability as a means to counter the culture of complacency towards delay in the criminal justice system" ...

That is *Mengistu* at paragraph 31.

... and (3) "the presumptive time limits are intended to promote accountability on the part of all participants in the criminal justice system, including the courts themselves" (*Mengistu* at para 33).

[27] I agree with the analysis in *Mengistu* and *Flett*; deliberation delay should be considered as included in the *Jordan* ceiling. I am not going to go into great detail on this, but based on my review of the relevant authorities, I am not bound by the decision in *Stogrin*. I have determined this in consideration of, of course, *Hansard Spruce Mills*, [1954] 4 DLR 590, and the application of judicial comity and the cases provided to me by counsel, including the 2025 decision of *R. v. McIntyre*, 2025 BCSC 1114.

[28] Based on my assessment then on the issue of deliberation delay, I find that 88 days should not be subtracted from the delay in this matter. The result then being that 77 days of delay continue from the date of the charges to the expected last day of the trial proper.

[29] Turning then to the Crown's alternate argument, namely that the complexity of this matter rebuts the presumption of unreasonableness of the delay that is in excess of the *Jordan* ceiling. As counsel have submitted, this falls under the two categories of exceptional circumstances described in *Jordan* at paragraph 71.

[30] I have again considered a number of authorities provided by counsel, including relevant portions of *Jordan* itself. I also have the benefit of counsel's very helpful submissions and of reading the Reasons for Judgment of Judge Munro of this court in *R. v. McNeill and Mull and Christensen*, (unreported) from 2023. In *R. v. McNeill and Mull and Christensen*, Judge Munro provides a useful analysis when he considered the issue of whether the Crown has established exceptional circumstances arising out of a particularly complex prosecution. Among other portions of the *Jordan* decision, Judge Munro includes in his decision part of paragraph 77 which I will read from in full:

As indicated, exceptional circumstances also cover a second category, namely, cases that are particularly complex. This too requires elaboration. Particularly complex cases are cases that, because of the nature of the *evidence* or the nature of the *issues*, require an inordinate amount of trial or preparation time such that ... delay is justified. As for the nature of the evidence, hallmarks of particularly complex cases [includes] voluminous disclosure, a large number of witnesses, significant requirements for expert evidence, and charges covering a long period of time. Particularly complex cases arising from the nature of the issues may be characterized by, among other things, a large number of charges and pre-trial applications, novel or complicated legal issues, and a large number of significant issues in dispute. Proceeding jointly against multiple co-accused, so long as it is in the interest of justice to do so, may also impact the complexity of [a] case.

[31] Judge Munro also quotes from Justice Frankel from the B.C. Court of Appeal in *R. v. Roberts*, 2020 BCCA 307, at paragraph 86, where Justice Frankel refers to the court in *Jordan* using the expressions "particularly complex" and "exceptionally complex." At paragraph 86 of *Roberts*, Justice Frankel writes:

The adverbs "particularly" and "exceptionally" reflect the fact that the complexity-exception bar is a high one and that the cases that reach it will be the exception [and] not the rule.

[32] In both the *Roberts* decision and in Judge Munro's decision there is also reference to the facts in *Jordan* and that the majority of the Supreme Court when deciding *Jordan* did not consider it to be particularly complex and only moderately so, which fell beyond the exceptional circumstances. Further, at paragraph 78 in *Jordan* the court also included that a typical murder trial would not qualify as a particularly complex case.

[33] There is no information before me to suggest that the disclosure in this matter or the nature of the evidence meets the high threshold required of a particularly complex case. While there are pre-trial complications, it is my understanding that those are part of the usual kind in a possession for the purposes of trafficking involved matter. Further, based on my review of the materials and consideration of submissions, I do not see that this matter concerns any novel or complicated legal issues, as I do not find that the manner of search issue falls within this latter category.

[34] Accordingly, in terms of the Crown's alternative argument, I find that the Crown has not discharged its duty to show that the matter concerns exceptional circumstances by way of a complex prosecution as a rebuttal to the delay here of 77 days.

[35] I find here that there has been a violation of Mr. [REDACTED] right to be tried within a reasonable time, contrary to section 11(b) of the *Canadian Charter of Rights and Freedoms*. As established by the court in *R. v. Jordan* and given the

delay here, I have no choice but to enter a judicial stay of proceedings relating to all counts before me pursuant to section 24(1) of the *Charter*.

(ORAL RULING RE DELAY APPLICATION CONCLUDED)