

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Bellusci, 2012 SCC 44, [2012] 2 S.C.R. 509 | **Date:** 20120803  **Docket:** 34054 |

**Between:**

**Riccardo Bellusci**

Appellant

and

**Her Majesty The Queen**

Respondent

- and -

**Attorney General of Ontario**

Intervener

**Coram:** McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Moldaver and Karakatsanis JJ.

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| **Reasons for Judgment:**  (paras. 1 to 47) | Fish J. (McLachlin C.J. and LeBel, Deschamps, Abella, Moldaver and Karakatsanis JJ. concurring) |

R. *v.* Bellusci, 2012 SCC 44, [2012] 2 S.C.R. 509

Riccardo Bellusci *Appellant*

v.

Her Majesty The Queen *Respondent*

and

Attorney General of Ontario *Intervener*

**Indexed as: R. *v.* Bellusci**

2012 SCC 44

File No.: 34054.

2012:  February 16; 2012:  August 3.

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Moldaver and Karakatsanis JJ.

on appeal from the court of appeal for quebec

*Constitutional law — Charter of Rights — Remedy — Stay of proceedings — Accused prisoner and prison guard both suffering injuries as a result of altercation — Accused charged with assault and intimidation of a justice system participant — Trial judge acquitting accused of assault charges and staying charge of intimidation of a justice system participant on ground that his s. 7 Charter rights had been breached — Whether stay of proceedings was a proper remedy — Canadian Charter of Rights and Freedoms, s. 24(1).*

*Criminal law — Appeals — Powers of Court of Appeal — Court of Appeal overturning stay of proceedings entered by trial judge and remitting matter back to trial court for continuation of trial — Whether Court of Appeal erred in interfering with trial judge’s decision to grant stay — Whether Court of Appeal has power to order continuation of trial — Criminal Code, R.S.C. 1985, c. C‑46, s. 686(4), (8).*

B, a prisoner, was charged with assault causing bodily harm, assault of a peace officer and intimidating a justice system participant following an altercation with A, a prison guard, during which both men suffered injuries. The trial judge acquitted B of both charges of assault and entered a stay of proceedings on the charge of intimidating a justice system participant on the ground that B’s rights under s. 7 of the *Charter* had been violated. The Court of Appeal quashed the stay and remitted the matter to the trial court for continuation of B’s trial.

*Held*: The appeal should be allowed and the stay of proceedings entered by the trial judge should be restored.

Section 24(1) of the *Charter* vests in trial judges broad discretion in granting “such remedy as the court considers appropriate and just in the circumstances”. It is well established that remedies granted by trial judges under s. 24(1) should be disturbed on appeal only where trial judges misdirect themselves or their decision is so clearly wrong as to amount to an injustice. Absent an error of law or reviewable finding of fact, appellate courts must defer to the broad discretion vested in trial judges by s. 24(1) of the *Charter*.

The trial judge in this case carefully and correctly considered all the relevant principles. He assessed the gravity of the prejudice and explained why he thought alternative remedies were inadequate. He did not misdirect himself on the applicable law or commit a reviewable error of fact. His exercise of discretion to grant a stay of proceedings was not so clearly wrong as to amount to an injustice. It is clear from his analysis that he felt that the *Charter* breach in issue here fell within the “residual” and “exceptional” category of cases where the misconduct was so egregious that the mere fact of going forward in the light of it will be offensive. Having found that B had been provoked and subjected by a state actor to intolerable physical and psychological abuse, it was open to the trial judge to stay the proceedings against him. Appellate intervention in these circumstances was therefore unwarranted.

A court of appeal, upon setting aside a stay of proceedings, may in appropriate circumstances remit the matter to the trial court for continuation of the trial, pursuant to ss. 686(4) and 686(8) of the *Criminal Code*. In allowing an appeal and setting aside an acquittal or a stay of proceedings, the court exercises a power under s. 686(4). An appellate court need not order a new trial or enter a verdict of guilty in order to trigger the application of s. 686(8), which depends only on the exercise of any of the powers conferred by s. 686(4).

**Cases Cited**

**Referred to:** *R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R. 297; *Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 S.C.R. 391; *R. v. Bjelland*, 2009 SCC 38, [2009] 2 S.C.R. 651; *R. v. Walcott* (2008), 57 C.R. (6th) 223; *R. v. Maskell*, 2011 ABPC 176, 512 A.R. 372; *R. v. Jackson*, 2011 ONCJ 228, 235 C.R.R. (2d) 289; *R. v. Mohmedi*, 2009 ONCJ 533, 72 C.R. (6th) 345; *R. v. J.W.*, 2006 ABPC 216, 398 A.R. 374; *R. v. R.L.F.*, 2005 ABPC 28, 373 A.R. 114; *R. v. Wiscombe*, 2003 BCPC 418 (CanLII); *R. v. Murphy* (2001), 29 M.V.R. (4th) 50; *R. v. Spannier*, 1996 CanLII 978; *R. v. Jewitt*, [1985] 2 S.C.R. 128; *R. v. Hinse*, [1995] 4 S.C.R. 597; *R. v. Provo*, [1989] 2 S.C.R. 3; *R. v. Yelle*, 2006 ABCA 276, 397 A.R. 287; *R. v. Smith*, 2004 SCC 14, [2004] 1 S.C.R. 385; *R. v. Thomas*, [1998] 3 S.C.R. 535.

**Statutes and Regulations Cited**

*Canadian Charter of Rights and Freedoms*, ss. 7, 24(1).

*Criminal Code*, R.S.C. 1985, c. C‑46, ss. 423.1(1)(*b*), (2)(*a*), 686(4), (8).

APPEAL from a judgment of the Quebec Court of Appeal (Morissette, Giroux and Gagnon JJ.A.), 2010 QCCA 2118, 83 C.R. (6th) 388, [2010] Q.J. No. 11919 (QL), 2010 CarswellQue 15627, upholding the accused’s acquittal on assault charges and setting aside the stay of proceedings entered on charges of intimidating a justice system participant by Legault J., 2008 QCCQ 21567, [2008] J.Q. no 24115 (QL), 2008 CarswellQue 15028. Appeal allowed and stay of proceedings restored.

*Francis Pilotte* and *Henri‑Pierre Labrie*, for the appellant.

*Carole Lebeuf* and *Michel Pennou*, for the respondent.

*Louis Belleau*, as *amicus curiae*.

*James K. Stewart* and *Robert Gattrell*, for the intervener.

The judgment of the Court was delivered by

Fish J. —

I

1. This appeal concerns a prisoner and a prison guard who both suffered injuries during the transportation of the prisoner by the prison guard between the court house in Montréal and a penitentiary in nearby Laval.
2. The prisoner was charged as a result with assault causing bodily harm, assault of a peace officer and intimidation of a justice system participant. The appellant, Riccardo Bellusci, was the prisoner. And the alleged victim, in all three cases, was the prison guard, Michel Asselin.
3. Mr. Bellusci was acquitted at trial of both charges of assault, and his acquittals are not in issue before us.
4. This appeal relates solely to the charge of intimidation. The trial judge found that Mr. Bellusci’s guilt on that count had been established by the Crown. He nonetheless declined to enter a conviction on the ground that Mr. Bellusci’s rights under s. 7 of the *Canadian Charter of Rights and Freedoms* had been violated (2008 QCCQ 21567 (CanLII)).
5. Mr. Bellusci stood charged with uttering threats to a prison guard who had *recklessly provoked him* and then, in response to the threats, *grievously assaulted him* while he was chained, shackled, handcuffed and defenceless — in the prison guard’s custody. For this egregious breach of his constitutional rights, Mr. Bellusci was entitled under s. 24(1) of the *Charter* to a constitutional remedy*.*
6. Section 24(1) of the *Charter* vests in trial judges broad discretion in granting, according to its terms, “such remedy as the court considers appropriate and just in the circumstances”. After considering lesser alternatives, the trial judge concluded that nothing short of a stay of proceedings would be an appropriate and just remedy in the exceptional circumstances of this case.
7. In exercising his discretion as he did, the trial judge committed no error of law, nor any reviewable error of fact. His conclusion was not manifestly unjust, within the meaning of the governing authorities.
8. On an appeal by the Crown, the Quebec Court of Appeal nonetheless quashed the stay and remitted the matter to the trial court for continuation of Mr. Bellusci’s trial (2010 QCCA 2118 (CanLII)). For the reasons that follow, I believe the Court of Appeal erred in setting aside the stay of proceedings entered at trial.
9. This alone is sufficient to allow Mr. Bellusci’s appeal to this Court against the judgment of the Court of Appeal, and to restore the stay of proceedings entered by the trial judge.
10. It is thus unnecessary, in order to dispose of the appeal, for us to consider a second question raised by the appellant, with leave of the Court. And the question is this: Was the Court of Appeal entitled, upon setting aside the stay, to order *continuation of the proceedings before the trial court*, or was it bound instead to order *a new trial*?
11. This is an important issue, not previously resolved by the Court. It was thoroughly canvassed by both parties, by the *amicus curiae*, and by the intervener as well. In these circumstances, I think it appropriate to provide guidance on the issue for the benefit of appellate courts before which it is bound to arise as an actual ― and not theoretical ― matter.

II

1. On May 15, 2007, Mr. Bellusci was a prisoner being transported in a van driven by Mr. Asselin.
2. The Crown alleged that Mr. Bellusci, on that occasion, assaulted Mr. Asselin without provocation and threatened to rape his wife and children. Mr. Bellusci admitted the threats but contended that Mr. Asselin *had in fact assaulted* *him*.
3. The trial judge was left with a reasonable doubt whether Mr. Bellusci had assaulted Mr. Asselin, but he was satisfied that Mr. Bellusci had threatened to sexually assault Mr. Asselin’s wife and children. The judge therefore acquitted Mr. Bellusci of the assault charges, but found that Mr. Bellusci was guilty of intimidating Mr. Asselin, a justice system participant.
4. However, the trial judge was persuaded, on a balance of probabilities, that the encounter in the prison van had unfolded as follows: (a) Mr. Bellusci had subjected Mr. Asselin [translation] “to verbal attacks that were abusive, insulting and crude” (para. 26); (b) Mr. Asselin had placed Mr. Bellusci in danger by disclosing to the other prisoners in the van that Mr. Bellusci was a rapist; (c) Mr. Bellusci then, in response, threatened to rape Mr. Asselin’s wife and children; (d) Mr. Asselin was injured when, as he was opening the cell door, Mr. Bellusci forced it upon him; and (e) Mr. Asselin then assaulted and injured Mr. Bellusci, who was at the time, chained, handcuffed and shackled in a secure cell in the prison van.
5. On the basis of these findings ― which are not in dispute ― the trial judge held that Mr. Bellusci’s constitutional rights under s. 7 of the *Charter* had been violated. It would shock informed members of the public to enter a conviction against Mr. Bellusci for having uttered verbal threats recklessly provoked and unlawfully punished *by the prison guard to whom the threats had been made*. After considering other available remedies, including a reduction of sentence and the possibility of legal or disciplinary proceedings against Mr. Asselin, the trial judge held that a stay of proceedings was the only appropriate remedy in the unusual and troubling circumstances of this case.

III

1. It is well established that a trial judge’s order under s. 24(1) of the *Charter* should be disturbed on appeal “only if the trial judge misdirects himself or if his decision is so clearly wrong as to amount to an injustice”: *R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R. 297, at para. 117; *Canada (Minister of Citizenship and Immigration) v. Tobiass*,[1997] 3 S.C.R. 391, at para. 87.
2. That this is the appropriate standard of review was unanimously reaffirmed by the Court, citing *Regan*, in *R. v. Bjelland*, 2009 SCC 38, [2009] 2 S.C.R. 651 (Rothstein J., at para. 15; Fish J., at para. 51). Speaking for myself and Justices Binnie and Abella, dissenting in the result, I elaborated as follows on the agreed standard of review:

On an application under s. 24(1) of the *Canadian Charter of Rights and Freedoms*, once an infringement has been established, the trial judge must grant “such remedy as [is] appropriate and just in the circumstances”. The remedy granted must vindicate the rights of the claimant, be fair to the party against whom it is ordered, and consider all other relevant circumstances. Appellate courts may interfere with a trial judge’s exercise of discretion only if the trial judge has erred in law or rendered an unjust decision. This is particularly true of remedies granted by trial judges under s. 24(1) of the *Charter*, which by its very terms confers on trial judges the *widest possible discretion*. Finally, appellate courts must take particular care not to substitute their own exercise of discretion for that of the trial judge merely because they would have granted a more generous or more limited remedy. [Emphasis in original; para. 42.]

1. Accordingly, the outcome of this appeal depends on whether the trial judge misdirected himself in law, committed a reviewable error of fact or rendered a decision that is “so clearly wrong as to amount to an injustice”. In my view, his decision suffers from none of these fatal flaws.
2. The trial judge first clearly and correctly outlined the applicable principles of law and relevant jurisprudence. He then considered the appropriate factors in light of the evidence before him.
3. It is clear from the substance of his analysis that he felt the *Charter* breach in issue here fell within the “residual” and “exceptional” category of cases where the misconduct was “so egregious that the mere fact of going forward in the light of it will be offensive” (*Tobiass*, at para. 91).
4. The trial judge held that this was a case of unlawful extrajudicial punishment that would shock the public. Mr. Bellusci was attacked by an agent of the state while chained, handcuffed, shackled and confined to his cell in a secure prison van. This was an apparent act of revenge by a prison guard who decided to make Mr. Bellusci [translation] “pay physically” for his unacceptable conduct (para. 21). The injuries inflicted on Mr. Bellusci were hardly trivial. They included [translation] “imprints of wire mesh with petechiae on the back of the left shoulder at the level of the shoulder blade, . . . injuries causing deformation of the left forearm, [and] bumps and injuries on the head and neck” (para. 34). As a result of his head injury, Mr. Bellusci was kept under observation overnight in the prison infirmary.
5. The trial judge was satisfied that the appellant’s threats, however reprehensible, would in all likelihood not have been uttered but for Mr. Asselin’s inappropriate disclosure to the other prisoners that the appellant was a sexual offender. The trial judge was clearly alive to the difficult position of prison guards, but this could not justify Mr. Asselin’s disclosure, which jeopardized Mr. Bellusci’s personal safety while imprisoned.
6. The integrity of the justice system was further tarnished, in the judge’s view, by the reticence and [translation] “sclerotic solidarity” that characterized the testimony at trial of Mr. Asselin’s fellow prison guards (para. 79).
7. Having found that Mr. Bellusci had been provoked and subjected by a state actor to intolerable physical and psychological abuse, it was open to the trial judge to decline to enter a conviction against him. As the Court explained in *Tobiass*, “if a past abuse were serious enough, then public confidence in the administration of justice could be so undermined that the mere act of carrying forward in the light of it would constitute a new and ongoing abuse sufficient to warrant a stay of proceedings” (para. 96).
8. I am therefore unable to share the conclusion of the Court of Appeal that the trial judge, in granting a stay, committed a reviewable error by overlooking the “*non sequitur*” between the state misconduct and the stay of proceedings (para. 21).
9. Nor am I able to agree that the trial judge erred in failing to consider the availability of less drastic remedies. On the contrary, as mentioned earlier, he expressly considered various alternatives and found that none were adequate in the circumstances.
10. Given the seriousness and the impact of the prison guard’s misconduct, the trial judge concluded that only a stay would be sufficient and appropriate in the circumstances.
11. Moreover, the trial judge appreciated the need to balance the competing interests at play in contemplating a stay of proceedings. He expressly took into account the difficult position of prison guards, the importance to the justice system of ensuring their protection, the seriousness of the charges against the accused, the integrity of the justice system, and the nature and gravity of the violation of Mr. Bellusci’s rights. Only then did he conclude that a stay was warranted.
12. Like the Court of Appeal, I might well have granted a lesser remedy. But absent an error of law or reviewable finding of fact, appellate courts must defer to the broad discretion vested in trial judges by s. 24(1) of the *Charter*. To repeat, as I explained in *Bjelland*, “appellate courts must take particular care not to substitute their own exercise of discretion for that of the trial judge merely because they would have granted a more generous or more limited remedy” (para. 42).
13. In short, the trial judge in this case carefully and correctly considered all the relevant principles. He assessed the gravity of the prejudice and explained why he thought alternative remedies were inadequate. He did not misdirect himself on the applicable law or commit a reviewable error of fact. Nor was his exercise of discretion to grant a stay of proceedings “so clearly wrong as to amount to an injustice” (*Regan*, *supra*). My conclusion in this regard relates exclusively to the circumstances of the present matter. In fairness to the trial judge, however, I note that other judges have considered a stay of proceedings to be a proportionate remedy for mistreatment suffered at the hands of law enforcement officers: *R. v. Walcott* (2008), 57 C.R. (6th) 223 (Ont. S.C.J.);[[1]](#footnote-1) *R. v. Maskell*,2011 ABPC 176, 512 A.R. 372;[[2]](#footnote-2) *R. v. Jackson*, 2011 ONCJ 228, 235 C.R.R. (2d) 289;[[3]](#footnote-3) *R. v. Mohmedi*, 2009 ONCJ 533, 72 C.R. (6th) 345;[[4]](#footnote-4) *R. v. J.W.*, 2006 ABPC 216, 398 A.R. 374;[[5]](#footnote-5) *R. v. R.L.F.*, 2005 ABPC 28, 373 A.R. 114;[[6]](#footnote-6) *R. v. Wiscombe*, 2003 BCPC 418 (CanLII);[[7]](#footnote-7) *R. v. Murphy* (2001), 29 M.V.R. (4th) 50 (Sask. Prov. Ct.);[[8]](#footnote-8) *R. v.* *Spannier*, 1996 CanLII 978 (B.C.S.C.).[[9]](#footnote-9)
14. With respect, appellate intervention in these circumstances was therefore unwarranted.

IV

1. I turn now to consider whether a court of appeal, upon setting aside a stay of proceedings, may in appropriate circumstances remit the matter to the trial court for continuation of the trial. I believe that it can, pursuant to ss. 686(4) and 686(8) of the *Criminal Code*, R.S.C. 1985, c. C-46.
2. Section 686(4)(*b*) provides that a court of appeal, upon allowing an appeal by the Crown against an acquittal at trial, may

(i) order a new trial, or

(ii) except where the verdict is that of a court composed of a judge and jury, enter a verdict of guilty with respect to the offence of which, in its opinion, the accused should have been found guilty but for the error in law, and pass a sentence that is warranted in law, or remit the matter to the trial court and direct the trial court to impose a sentence that is warranted in law.

It is well established that “acquittal”, in this context, includes a stay of proceedings, since it brings the proceedings to a final conclusion in favour of the accused: *R. v. Jewitt*, [1985] 2 S.C.R. 128.

1. Section 686(8) provides, in turn, that a court of appeal, upon exercising any of its powers under s. 686(4), “may make any order, in addition, that justice requires”.
2. Understandably, the phrase “in addition” has been thought to connote that a court of appeal, in setting aside an acquittal or stay of proceedings, may make an order under s. 686(8) only if it substitutes a conviction or orders a new trial ― its only powers explicitly conferred by s. 686(4).
3. However, in *R. v. Hinse*, [1995] 4 S.C.R. 597, Lamer C.J. held that s. 686(8) must be given a large and liberal interpretation consistent with its “broad remedial purpose” (para. 30; see also *R. v. Provo*, [1989] 2 S.C.R. 3, at p. 20). And, although the Chief Justice considered that s. 686(8) orders are “fundamentally ancillary and supplemental” (para. 31), he nonetheless held that “a court of appeal may enter an order under its residual power even if the court of appeal has not previously and independently ‘exercise[d] any of the powers conferred by subsection (2), (4), (6) or (7)’ of s. 686” (para. 30). This solution was adopted by the Alberta Court of Appeal in *R. v. Yelle*, 2006 ABCA 276, 397 A.R. 287.
4. In *R. v. Smith*, 2004 SCC 14, [2004] 1 S.C.R. 385, Binnie J. reached the same conclusion by a route that conforms more closely to the text of s. 686(8). Dealing in *Smith* with s. 686(2), which applies to an appeal from a conviction, Justice Binnie stated:

Section 686(2) provides that where a Court of Appeal allows an appeal, “it shall quash the conviction”, and s. 686(8) provides that, on the exercise of “any of the powers” under s. 686(2), the court may make “any order, in addition, that justice requires”. The quashing of the conviction is an exercise of the court’s power under s. 686(2). [para. 22]

1. The same reasoning applies to s. 686(4). In allowing the appeal and setting aside the acquittal (or stay of proceedings), the court *exercises a power under s. 686(4)*. It follows, in my view, that an appellate court need not order a new trial or enter a verdict of guilty in order to trigger the application of s. 686(8), which depends only on the exercise of “*any* of the powers” conferred by s. 686(4).
2. Accordingly, s. 686(8), which allows “any order . . . that justice requires”, authorizes an appellate court to order the continuation of a trial ― but only where continuation of the trial is what “justice requires” in the particular circumstances of the case. Manifestly, an order under s. 686(8) must not be at variance with the underlying judgment: *R. v. Thomas*, [1998] 3 S.C.R. 535, at para. 17.
3. Applying these principles in *Yelle*, the Alberta Court of Appeal set aside a stay of proceedings, but declined to either substitute a conviction or order a new trial. Instead, the court ordered continuation of the trial because that is what justice required in the circumstances of the case:

The implications of ordering a new trial would be enormous in a case such as this. It would require the rehearing of three months of evidence for no good reason. In addition to being completely unnecessary, it would be a great waste of the court’s resources, the witnesses’ time, and the respondents’ money (requiring them to pay again for legal services already provided).

Further, there is no advantage to the parties or the administration of justice to start anew. Indeed, there will be prejudice to all involved; the parties, witnesses, and the reputation of the administration of justice. [paras. 17-18]

1. Continuation of the trial will not always be preferable or even possible. It is in any event an order that can properly be made only where the interests of justice require it, where there is no undue prejudice to the parties, and where no unfairness would result.
2. Finally, I believe the trial court to which the matter is remitted should retain its discretion to instead order a new trial where resumption of the interrupted proceedings proves to be impractical or unfair.
3. On this appeal, as mentioned earlier, both parties agree that a court of appeal may order continuation of the trial upon setting aside a stay of proceedings. They both submit, however, that a conviction should instead be entered in this case if the stay is overturned, since the relevant findings of fact have in their view already been made.
4. In view of my conclusion that the stay was wrongly set aside by the Court of Appeal, I find it unnecessary to express a decided view regarding its order that the trial should be resumed. I think it sufficient to say there appears to be merit in the submission of the *amicus curiae* that a conviction was not a foregone conclusion.
5. As the *amicus curiae* points out, the indictment against Mr. Bellusci alleges physical violence, contrary to s. 423.1(1)(*b*) and (2)(*a*), whereas Mr. Bellusci was only found to have uttered *verbal threats*, an offence under a different subsection of the *Code*.

V

1. For all of these reasons, I would allow the appeal and restore the stay of proceedings entered by the trial judge.

*Appeal allowed and stay of proceedings restored.*

Solicitors for the appellant:  Lord, Poissant & Associés, Brossard.

Solicitor for the respondent:  Directeur des poursuites criminelles et pénales du Québec, Montréal.

Solicitors appointed by the Court as amicus curiae:  Shadley Battista, Montréal.

Solicitor for the intervener:  Attorney General of Ontario, Toronto.

1. Stay entered for possession for the purposes of trafficking. The police tasered an accused who was handcuffed, fully restrained and compliant. [↑](#footnote-ref-1)
2. Stay granted for driving while disqualified. The police used excessive force in arresting the accused, striking his head several times against a vehicle, causing permanent injuries requiring surgery. [↑](#footnote-ref-2)
3. Stay entered for assaulting police and resisting arrest. Five police officers pepper-sprayed and kneed the accused several times; the accused struck his head on the concrete and suffered a broken jaw. The trial judge was also concerned that police testimony was untruthful. [↑](#footnote-ref-3)
4. Stay granted for impaired driving and dangerous driving. Although provoked by unruly behaviour, foul language, and the “resistive stance” of the accused (para. 38), the police used excessive force in striking the accused while he was handcuffed and presented no threat. [↑](#footnote-ref-4)
5. Stay entered for charges of breaking and entering and possession of concealed weapons and housebreaking tools. The police used excessive force in tasering the accused, who was 15 years old, during a strip search at the police station. [↑](#footnote-ref-5)
6. Stay entered for charges of failing to comply with a condition of release (abstaining from alcohol). The police conducted an unreasonable strip search and tasered the accused despite the situation being under control, causing bruises, abrasions, burn marks, a broken tooth and bruises to the face. [↑](#footnote-ref-6)
7. Stay entered for assaulting a peace officer. Despite the violent behaviour of the accused, the police used excessive force in pepper-spraying him while he was handcuffed and lying face down on the floor with a foot on his head. [↑](#footnote-ref-7)
8. Stay granted for dangerous driving and refusing a breathalyzer test. The accused was forced to remain seated in his own excrement longer than necessary, denied proper clean-up facilities, subjected to rude and ridiculing remarks, and arbitrarily and unnecessarily detained. [↑](#footnote-ref-8)
9. Stay granted for impaired driving. The accused was handcuffed for no reason and pepper-sprayed in the eyes for insulting a police officer. [↑](#footnote-ref-9)