

## Manitoba Court of Appeal tasked with determining psychological detention

By **John L. Hill**

Law360 Canada (December 19, 2025, 8:45 AM EST) -- Psychological detention occurs when a person submits to a police officer's authority or is deprived of liberty, reasonably believing the choice to do otherwise does not exist (*R. v. Tessier*, 2022 SCC 35). One would expect that raising psychological detention on appeal from conviction would be a simple, fact-driven analysis. Yet the Manitoba Court of Appeal took 256 paragraphs to rule out psychological detention as a basis for Charter relief. The court's reasons are in *R. v. Francois*, 2025 MBCA 93.

Jerry Samuel William Francois, a man assumed to be Indigenous, was arrested in the back lane behind a three-storey apartment building known to police as an area for frequent property crime, drug activity, violence, gang presence and poverty. Constables Keith and Pratte observed the accused with his back to them and facing a fence. He was bent over a purple Hutch BMX-style bicycle, operating a cordless angle grinder that produced a loud, distinctive noise. The accused's positioning and use of the grinder drew the attention of Keith. The officers were not responding to any specific complaint or call for service at the time.



John L. Hill



PCH-Vector: ISTOCKPHOTO.COM

From about 10 feet away, Keith observed that the bicycle was in good working condition. The front brakes had been removed, which he understood to be common for trick riding. The bike also had aftermarket pegs and a modified sprocket. Keith estimated its value at \$600-\$700 based on his own cycling experience. He saw no cut locks or chains and no tools typically used for bicycle repair.

Keith informed the accused that he was investigating him for bicycle theft and requested that the accused show his hands because the accused had just placed something in his backpack. A two- to three-minute conversation followed, which was polite and co-operative. The accused did not appear nervous. He said he had purchased the bicycle for \$100 and claimed he used it for transportation, not at a skate park. Keith found these explanations implausible given the accused's size, the bicycle's design and modifications, and the circumstances. As questioning continued, the accused's answers became shorter and less clear, and he began to walk away with the bicycle while the other individuals encouraged him to leave.

Based on his observations and the conversation, Keith believed the accused had stolen the bicycle. Francois was arrested for theft under \$5,000 and possession of property obtained by crime under \$5,000. He co-operated and was placed in the police vehicle. He gave the name of his brother, Conrad Francois, along with accurate background details.

Pratte searched the accused's backpack and recovered the angle grinder, along with a firearm and ammunition. Keith realized the accused had provided a false identity and was wanted on three outstanding warrants. Keith later testified that he was frightened upon realizing the accused had access to a firearm during the encounter. Francois was arrested on the outstanding warrants and additional offences, including unauthorized possession of a firearm, probation breaches, possession of break-in tools and obstructing police. He was informed of his rights, indicated he understood them, declined to contact counsel and was transported to the police station. No record was found indicating the bicycle had been reported stolen.

Francois claimed at trial that he was psychologically detained before arrest, that the arrest lacked reasonable and probable grounds, and that the search was unlawful. The trial judge found no Charter breach and admitted the evidence, leading to convictions. On appeal, the accused narrowed his arguments to whether psychological detention occurred at the time when the street encounter began and whether the arrest was lawful under s. 495(1)(a) of the *Criminal Code*.

The Court of Appeal began its analysis by pointing out that Francois' arrest was not on account of his Indigenous background nor the result of racial profiling. The court accepted that in *R. v. Le*, 2019 SCC 34, issues of an individual's racial background can have different and distinctive roles in a Charter analysis of an arrest or detention. Any analysis should take a particular community's past associations with police into account in determining if a feeling of psychological detention was appropriate.

Ultimately, the decision on whether psychological detention took place turned on an assessment of the facts surrounding the arrest in light of the Supreme Court criteria established in *R. v. Suberu*, 2009 SCC 33 and *R. v. Grant*, 2009 SCC 32. The court summarized the relevant Charter analysis as to the crystallization of a detention in the following way:

1. Detention under ss. 9 and 10 of the Charter refer to a suspension of the individual's liberty interest by a significant physical or psychological restraint. Psychological detention is established either where the individual has a legal obligation to comply with the restrictive request or demand, or where a reasonable person would conclude, by reason of the state's conduct, that he or she had no choice but to comply.
2. In cases where there is no physical restraint or legal obligation, it may not be clear whether a person has been detained. To determine whether the reasonable person in the individual's circumstances would conclude that he or she had been deprived by the state of the liberty of choice, the court may consider, *inter alia*, the following factors:
  - (a) The circumstances giving rise to the encounter as the individual would reasonably perceive them: whether the police were providing general assistance; maintaining general order; making general inquiries regarding a particular occurrence; or singling out the individual for focused investigation.
  - (b) The nature of the police conduct, including the language used; the use of physical contact; the place where the interaction occurred; the presence of others; and the duration of the encounter.

(c) The particular characteristics or circumstances of the individual, where relevant, including age; physical stature; minority status; level of sophistication.

The onus of proof to establish a detention for ss. 9 or 10 of the Charter was stated in *Suberu* as resting with the applicant to show that, in the circumstances, they were effectively deprived of their liberty of choice. The test is objective, and the applicant's failure to testify as to their perceptions of the encounter is not fatal to the application. However, the applicant's contention that the police, by their conduct, effected a significant deprivation of his or her liberty must find support in the evidence.

The Appeal Court agreed with the trial court that psychological detention had not been established and there was no basis to grant a Charter remedy.

*John L. Hill practised and taught prison law until his retirement. He holds a JD from Queen's and an LLM in constitutional law from Osgoode Hall. His most recent book, Acts of Darkness (Durville & UpRoute Books), was released July 1. Hill is also the author of Pine Box Parole: Terry Fitzsimmons and the Quest to End Solitary Confinement (Durville & UpRoute Books) and The Rest of the (True Crime) Story (AOS Publishing). Contact him at johnlornehill@hotmail.com.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the author's firm, its clients, Law360 Canada, LexisNexis Canada or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

*Interested in writing for us? To learn more about how you can add your voice to Law360 Canada, contact Analysis Editor Peter Carter at peter.carter@lexisnexis.ca or call 647-776-6740.*