

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Brown*, 2018 NSCA 62

Date: 20180717

Docket: CAC 468216

Registry: Halifax

Between:

Michael Anthony Brown

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Anne S. Derrick

Appeal Heard: May 8, 2018, in Halifax, Nova Scotia

Subject: **Criminal Law. Search Warrant - Sufficiency of ITO – s. 8 Charter – s. 24(2) analysis. *R. v. Jordan* – Delay.**

Summary: The appellant was convicted of production of marihuana, assault and uttering threats. He challenged the sufficiency of the Information to Obtain the Warrant (ITO) and argued that his trial had been unreasonably delayed.

The police executed a search warrant at the appellant's residence and seized eight marihuana plants and some dried marihuana. The warrant had been authorized on the basis of a strong smell of fresh marihuana, the appellant's 2009 conviction for possession of marihuana, and police database entries indicating the appellant had previously been suspected of cultivating marihuana.

The appellant was arrested and charged on November 14, 2014. His trial in Provincial Court proceeded almost thirty months later.

- Issues:**
- (1) Did the trial judge err in finding that the information in the ITO was sufficient to establish reasonable grounds for authorizing it? If so, should the evidence seized by police be excluded pursuant to section 24(2) of the *Charter*?
 - (2) Was the appellant's trial unreasonably delayed entitling him to a stay of proceedings?

Result: Appeal allowed in part. Appeal against conviction for marihuana conviction allowed. The trial judge was in error in dismissing the appellant's section 8 challenge to the warrant. The information in the ITO was insufficient in its totality to establish reasonable grounds for the issuance of the warrant. It was inadequate and unreliable. The appellant had a dated conviction for simple possession of marihuana. The police database entries lacked specificity. The seized evidence should have been excluded pursuant to section 24(2) of the *Charter*. As the evidence was dispositive of the Crown's case on the marihuana production charge, its exclusion left nothing to sustain that conviction. Consequently, an acquittal was entered on the charge of marihuana production.

Appeal against dismissal of stay of proceedings due to delay dismissed. The trial judge made no error in concluding that the appellant did not establish a violation of his constitutional right under section 11(b) of the *Charter* to a trial within a reasonable time. Convictions for assault and uttering threats upheld.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 17 pages.