NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Alcorn*, 2021 NSCA 75

Date: 20211110
Docket: CAC 503050
Registry: Halifax

Between:

Nicholas Steven Alcorn

Appellant

v.

Her Majesty the Queen

Respondent

Judge:	The Honourable Justice Anne S. Derrick
Appeal Heard:	September 17, 2021, in Halifax, Nova Scotia
Subject:	Sentencing. Break and enter into an occupied home. Range.
Summary:	The Appellant appealed the five-year sentence he received for a break and enter at night into the home of an older man living in an isolated, rural area. The sentencing proceeded on the basis of a guilty plea and an Agreed Statement of Facts. Although the Appellant carried a knife with him during the break and enter he did not brandish it or use any violence during his time in the residence. The judge found the circumstances were very serious but did not qualify for the application of a statutory aggravating factor pursuant to s. 348.1, of the *Criminal Code*, R.S.C. 1985, c. C-46. However, she did find aggravating circumstances justified a substantial period of incarceration.
Issues:	(1) Did the judge err by failing to properly consider relevant sentencing principles and factors, including the principles of parity and proportionality, and did she over-emphasize deterrence and denunciation?

(2) Was the five year sentence for break and enter demonstrably unfit, having regard to the nature of the offences committed and the circumstances of the Appellant?

Result: Leave to appeal granted. Appeal dismissed. Break and enter into a dwelling house, particularly one that is occupied will often result in a federal penitentiary sentence. The particular circumstances of the offence and of the offender will determine where a case fits in a range, although ranges must be viewed flexibly and in accordance with the individualized nature of sentencing. The judge's balancing of the relevant principles and factors in arriving at a sentence of five years' imprisonment is entitled to deference. She made some errors in her assessment of aggravating and mitigating factors however appellate intervention is not warranted. The sentence was not demonstrably unfit.

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Alcorn*, 2021 NSCA 75

Date: 20211110
Docket: CAC 503050
Registry: Halifax

Between:

Nicholas Steven Alcorn

Appellant

v.

Her Majesty the Queen

Respondent

Judges:	Bryson, Derrick, and Beaton, JJ.A.
Appeal Heard:	October 7, 2021, in Halifax, Nova Scotia
Held:	Leave to appeal granted; appeal dismissed, per reasons for judgment of Derrick, J.A.; Bryson and Beaton, JJ.A., concurring
Counsel:	Jade M. Pictou, for the appellant Erica Koresawa, for the respondent

Reasons for judgment:

Introduction

[1] Mr. Alcorn was sentenced on December 2, 2020 by Justice Denise Boudreau of the Nova Scotia Supreme Court for: unlawfully taking a motor vehicle, contrary to s. 335 of the *Criminal Code*, R.S.C. 1985, c. C-46; break and enter into a residence and committing the indictable offence of possession of a weapon for a dangerous purpose, contrary to s. 348(1)(b) of the *Code*; and assault with a weapon, contrary to s. 267(a) of the *Code*. Guilty pleas were entered to the first two offences on October 15, 2020 and to the third offence on December 2, 2020.

[2] Mr. Alcorn received five years' imprisonment for the break and enter, ninety days' incarceration for the taking of the motor vehicle, and one year for the assault. The latter two sentences were to be served concurrently to each other and to the five year sentence. The judge gave Mr. Alcorn enhanced credit of 1.5 days per day for the time he had spent in pre-sentence custody for a total of 314 days to be deducted from the global five-year sentence.

[3] Mr. Alcorn's appeal is focused on his five-year sentence for the break and enter. He says the judge made errors in principle and imposed a manifestly unfit sentence for that offence. He seeks leave to appeal and asks this Court to substitute a sentence of time served plus probation. He does not take issue with the sentences imposed for taking the motor vehicle and the assault.

[4] The Crown does not oppose leave to appeal being granted.

[5] As these reasons explain, I do not agree that Mr. Alcorn's five-year sentence should be disturbed. I would grant leave to appeal, but dismiss the appeal and uphold the sentence imposed by Justice Boudreau.

The Facts at Sentencing

[6] Mr. Alcorn pleaded guilty on the basis of an Agreed Statement of Facts, attached to these reasons as Appendix "A"[1]. The following is a synopsis of those facts.

[7] On June 19, 2019, Mr. Alcorn stole a motor vehicle from Premium Auto in Dartmouth, having pretended to be a purchaser and purporting to take the car for a test drive. A tire ruptured in a rural area of Nova Scotia, rendering the vehicle inoperable. An attempt was made to change the tire, without success.

[8] It was late and Mr. Alcorn was stranded. He noticed a truck parked in a driveway. He searched the unlocked truck for its keys but only found house keys and a knife.

[9] Mr. Alcorn entered the home hoping to find the truck keys inside. It was near midnight. The homeowner, 68 year old Terry Rogers, awoke to see Mr. Alcorn holding a flashlight and the knife. Mr. Alcorn said he did not want to hurt him and just wanted the truck keys. Not wanting to surrender the truck, Mr. Rogers offered to drive Mr. Alcorn where he needed to go.

[10] Mr. Rogers insisted on driving. Mr. Alcorn sat in the front passenger's seat with the knife from the truck in his hand. When he realized Mr. Rogers was not heading in the direction he had requested, he stopped the truck by reaching over and putting his foot on the brake pedal.

[11] Mr. Rogers reacted by removing the keys from the ignition and getting out of the truck. Mr. Alcorn went after the keys and, in the scuffle that ensued, Mr. Rogers' hands were cut on the knife Mr. Alcorn was still holding.

[12] Mr. Alcorn took off in the truck, leaving Mr. Rogers on the side of the road. After a passerby stopped to help, Mr. Rogers was transported to hospital by EHS. While there, in addition to the injuries to his hands, which the judge described as "fairly significant", and which required eight stitches, he was treated for heart issues.

[13] On July 2, 2019, Mr. Alcorn was arrested north of Toronto, still in possession of Mr. Rogers' truck. He pleaded guilty to possession of stolen property

[1] The Agreed Statement of Facts has been redacted by this Court to remove unnecessary information.

and received a short custodial sentence. He was then returned to Nova Scotia to face the charges here.

[14] Mr. Alcorn's sentencing included a *Gardiner*[2] hearing into whether he had the knife with him in the house or only had possession of it once he was in the truck with Mr. Rogers. After hearing from Mr. Rogers, the only witness to testify, the judge found beyond a reasonable doubt that Mr. Alcorn had taken the knife from the truck with him into Mr. Rogers' home and had it in his possession throughout the events that followed. The judge was satisfied that until the later scuffle outside the truck, Mr. Alcorn did not do anything with the knife other than simply hold it in his hand.

The Sentencing Judge's Reasons

[15] Justice Boudreau held that the facts in this case put the range for Mr. Alcorn's sentence into "significant federal custody". She said the range suggested by the Crown of six to ten years was, "if not accurate, very close to being accurate…". She regarded Mr. Alcorn's position that his sentence be "time served", "a period of time of even less than one year", as untenable.

[16] The judge recognized that denunciation and deterrence were to be emphasized in Mr. Alcorn's sentence. She acknowledged the objective of rehabilitation was not to be overlooked. As she said: "Mr. Alcorn's rehabilitation is the outcome that we all hope for".

[17] The Crown sought a sentence of five years and ten months (70 months) for the break and enter. Crown counsel argued the facts amounted to a home invasion requiring the application of a statutory aggravating factor pursuant to s. 348.1. That section applies if the offender knew the dwelling house was occupied or was reckless as to whether it was and used violence or threats of violence. The critical question was whether Mr. Alcorn used violence during the break and enter. Following the *Gardiner* hearing, the judge found he had not; the violence occurred later, during the struggle for the truck keys by the side of the road. She also noted that Mr. Alcorn pleaded guilty, not to break and enter and committing an assault, but to break and enter and committing the offence of possession of a weapon for a

[2] *R. v. Gardiner*, [1982] 2 S.C.R. 368. A *Gardiner* hearing is required where the Crown wishes to rely on aggravating facts at sentencing that are contested. Such facts must be proven by the Crown beyond a reasonable doubt.

dangerous purpose. He had pleaded guilty to an assault with a weapon arising out of the altercation that resulted in the cuts to Mr. Rogers' hands.

[18] Having rejected the applicability of the statutory aggravating factor, the judge went on to find it was "a very significant aggravating factor that Mr. Alcorn's break and enter was into a home". She noted it occurred in the middle of the night in a remote location. She found that it would have been a frightening experience for Mr. Rogers to wake up to a man standing at the end of his bed, holding a knife.

[19] The judge recognized the impact of the break and enter and the subsequent assault on Mr. Rogers, whom she described as older and not in perfect health. Mr. Rogers not only had his hand stitched, he also underwent heart surgery, which the judge attributed at least in part to the stress he had endured. The judge found Mr. Rogers had been subjected to " a very difficult" experience with "lasting consequences".

[20] The judge noted as aggravating the fact that Mr. Alcorn was in possession of a knife throughout his interactions with Mr. Rogers, contributing to the "frightening nature of the experience" and "the risk of violence".

[21] As for mitigating factors, the judge viewed Mr. Alcorn's guilty pleas as the most significant. She also considered:

- His remorse and acknowledgement of responsibility.
- The "heartfelt" letter of apology he read at the sentencing hearing. It was addressed to the court, Mr. Rogers, and Mr. Alcorn's family.
- His reasonably short criminal record and the absence of any recent violence.
- The absence of masks, guns, and restraints, typically seen in break and enters into residences. The judge said these would have been treated as aggravating had they been used.
- Mr. Alcorn's efforts toward rehabilitation such as his active engagement with the social worker during his remand at the Central Nova Scotia Correctional Facility.

[22] Earlier in her reasons, the judge referred to personal details about Mr. Alcorn, obtained from a pre-sentence report. At the time of sentencing, he was 31 years old. He disclosed a history of struggling with addiction issues, notably cocaine. He has three children with whom he was maintaining contact. He was engaged to a woman who had written a letter of support for his sentencing. He had a number of supportive people in his life. He is a qualified carpenter and indicated an intention to return to that line of work.

Grounds of Appeal/Issues

[23] Mr. Alcorn's factum sets out his grounds of appeal:

1) The sentencing judge erred by failing to properly consider relevant sentencing principles and factors, including the principles of parity, proportionality, deterrence and denunciation; and
2) The sentence imposed was demonstrably unfit, having regard to the nature of the offences committed and the circumstances of the Appellant.

[24] Mr. Alcorn says his five-year sentence reflects errors by the judge in the application of mitigating and aggravating factors and an over-emphasis of the principles of denunciation and deterrence. In his submission the judge was influenced by a sentencing range that applies to home invasion cases instead of anchoring her analysis in *R. v. Zong*[3], where a break and enter garnered a three-year sentence. He says this led to a distortion of the principles of proportionality and parity.

Standard of Review

[25] Sentencing decisions are accorded a high degree of deference on appeal. Appellate intervention is warranted if: (1) the sentencing judge has committed an error in principle that impacted the sentence; or (2) the sentence is demonstrably unfit. Errors in principle include "an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor" (*R. v. Friesen*[4]; *R. v. Espinosa Ribadeneira*[5]).

---

[3] [1986] N.S.J. 207 (N.S.S.C., App. Div)
[4] 2020 SCC 9, at para. 26
[5] 2019 NSCA 7, at para. 34

[26] A “demonstrably unfit” sentence is one that is “clearly or manifestly” excessive or inadequate or represents a "substantial and marked departure" from the cardinal principle of proportionality (*R. v. Lacasse*[6]).

[27] As *Lacasse* explains, the focus of an inquiry into whether a sentence is manifestly unfit is on the principles and objectives of sentencing. The gravity of the offence, the offender's degree of culpability, and parity must be reconciled in the crafting of a fit sentence.[7]

Positions of the Parties

The Appellant’s Arguments

[28] In Mr. Alcorn’s submission, the judge should have used the *Zong* benchmark of three years as a starting point, not the six to ten year range associated with home invasion cases. He says the judge’s reliance on home invasion cases and their substantially more egregious facts led to a disproportionate sentence. Mr. Alcorn says he was sentenced more severely than he should have been given the lesser gravity of his offence and his degree of responsibility. He also complains the judge failed to apply the principle of restraint.

[29] Mr. Alcorn says the applicable range in his case is a suspended sentence to no more than four years’ imprisonment. Four years’ imprisonment would represent starting with *Zong* and increasing the sentence to account for aggravating circumstances.

[30] Recognizing that *Zong* was a break and enter into an unoccupied commercial building – a pharmacy – in search of drugs, Mr. Alcorn has asked us to consider where his offence lies, noting that it was not found to qualify as a home invasion. He submits the judge, in error, started with six years, a home invasion-informed entry point, and settled on five years after taking mitigating factors into account.

[31] Mr. Alcorn argues for a variation of his sentence to time served, that is, his remand credit of 314 days (1.5 days for each day in pre-sentence custody) and the days he has served of his sentence. He acknowledges that the time he has served

---

[6] 2015 SCC 64, at para. 52, citing Laskin, J.A. in *R. v. Rezaie* (1996), 31 O.R. (3d) 713 (C.A.)
[7] *Lacasse*, at para. 53

since his sentencing on December 2, 2020, unlike remand time, does not attract any enhanced credit.

The Respondent Crown's Arguments

[32] The Crown says the six-to-ten year range, not *Zong*, was applicable to Mr. Alcorn's offence because of its similarity to a home invasion. Mr. Alcorn's offence had to warrant a higher sentence than the three years imposed in *Zong*. The judge's consideration of the aggravating and mitigating factors took Mr. Alcorn's sentence to a fit and proper five years. According to the Crown, Mr. Alcorn enjoyed the benefit of the judge unduly emphasizing certain mitigating factors and considering others that were not actually mitigating. Furthermore, she did not take into account all the aggravating factors that were present.

[33] The Crown argues the judge's emphasis on denunciation and deterrence was justified by the gravity of Mr. Alcorn's offence. She properly took into account Mr. Alcorn's prospects for rehabilitation. The five-year sentence showed she exercised restraint.

Analysis

[34] Break and enter into a dwelling house, particularly one that is occupied, will often result in a federal penitentiary sentence. Great deference is to be accorded to the sentencing judge's balancing of the relevant principles and factors in arriving, in this case, at a sentence of five years. She properly and proportionately emphasized the principles of denunciation and deterrence. I do not agree the judge treated the break and enter as a home invasion and sentenced Mr. Alcorn more heavily as a result.

[35] The judge viewed the Crown's six-to-ten year range as reasonable. She did not mention in her analysis the three-year "benchmark" derived from *Zong*, referenced by this Court without comment in *R. v. Izzard*,[8] a break and enter into a dwelling. The judge properly rejected Mr. Alcorn's argument that he should be sentenced to time served, the 314 days of enhanced remand time, and I am satisfied she made no reversible error fixing five years as Mr. Alcorn's sentence for the break and enter.

[8] 2013 NSCA 88, at para. 60

[36] Although I find no basis for setting aside Mr. Alcorn's sentence, I agree the judge made some errors in her assessment of aggravating and mitigating factors.

[37] The judge should not have treated as mitigating the fact that Mr. Alcorn was not masked and did not use a gun or restraints, features often seen in violent home invasions. These are not mitigating circumstances. Had they been present, they would have aggravated the sentence.

[38] However, I disagree with the Crown's position on appeal that the mitigation found in Mr. Alcorn's guilty plea should have been attenuated because Mr. Rogers was still obliged to testify at the *Gardiner* hearing. Mr. Rogers' evidence was required because the Crown wished to prove Mr. Alcorn had been in possession of the knife during the time he was in the home. This does not change the fact that Mr. Alcorn took responsibility for the offences with which he was charged and, in addition, made what the judge called a "heartfelt" apology. For a guilty plea to be treated as mitigating, it is not necessary for the offender to admit to all the aggravating circumstances on which the Crown wishes to rely. The mitigatory "value" of a guilty plea is to be assessed in accordance with the individualized nature of sentencing on the facts of the particular case. The treatment by the judge of Mr. Alcorn's guilty plea as mitigating is entitled to deference.

[39] I also note the sentencing Crown's statement in their pre-sentence brief to the judge that the *Gardiner* hearing did not "negate in any way" the mitigating effect of the guilty plea.

[40] The judge appears to have erroneously regarded as aggravating the fact that Mr. Alcorn broke into a home. This was reflected in her comments upon deciding the break and enter did not constitute a home invasion:

> …However, I want to make it clear that even if I do not consider 348.1[9] to be applicable as a statutory aggravating factor, it is still a significant aggravating factor. And I want to make that clear. In my view, I find it to be a very significant aggravating factor that Mr. Alcorn's break and enter was into a home…Mr. Alcorn again, knew this was a home. It was not a business.

[41] It could not be an aggravating factor that the break and enter was into a home. This was an essential element of the offence to which Mr. Alcorn pleaded guilty – "did unlawfully break and enter a place… a residence of Terry Rogers…and did commit therein the indictable offence of possession of a weapon

[9] s. 348.1, *Criminal Code*, R.S.C. 1985, c. C-46

for a dangerous purpose contrary to section 348(1)(b) of the *Criminal Code*". However, it is indisputable that a break and enter into an occupied home is a very serious offence. The judge's determination the appropriate sentence was five years is entitled to deference and reflects her reliance on the aggravating factors present that she properly considered.

[42] Mr. Rogers' vulnerability as an older person, the isolated rural location of his home, and the fact he was alone and asleep when Mr. Alcorn broke in was evidence the judge had from the *Gardiner* hearing. The judge noted in her reasons that she had had "the opportunity to observe Mr. Rogers describe what took place". She commented on the traumatic experience he had undergone, confronted in the middle of the night by an intruder carrying a knife.

[43] As for certain factors the Crown says the judge could have treated as aggravating had the Crown been seeking to increase Mr. Alcorn's sentence on appeal, I would not have viewed the judge leaving these facts out of her analysis as an error:

- When he committed these offences, Mr. Alcorn was on release conditions. The sentencing Crown did not argue this fact should be treated as aggravating. He referenced it when discussing Mr. Alcorn's criminal record, noting that Mr. Alcorn had resolved the related outstanding charges by way of guilty pleas in December 2019.

- Mr. Alcorn had a related criminal record for thefts. I note the sentencing Crown described Mr Alcorn's prior criminal record as "very minimal" and indicative of "someone…having addiction issues".

- Mr. Alcorn took Mr. Rogers' mobile phone, depriving him of being able to call for help. This could have been treated as an aggravating factor by the judge although not to the extent of a finding that Mr. Alcorn took the phone in order to prevent Mr. Rogers summoning help as there was no evidence concerning motive.

[44] I am satisfied the judge did a careful balancing of the aggravating and mitigating factors and did not misapply the principles of proportionality and parity, given the circumstances of the offence and of Mr. Alcorn.

[45] In arriving at her conclusion that in this case a sentence of five years was appropriate, the judge considered the decisions of *R. v. Harris*[10] and *R. v. Fraser*[11], where the facts in each qualified the break and enters as home invasions.

[46] The Crown relies on the statement in *Fraser* that: "This Court has approved a range of sentence between six and ten years for robberies of financial institutions and private dwellings…"[12] *Fraser* went on to describe a "…premeditated, planned attack on a vulnerable victim conducted in an atmosphere of violence and intimidation".[13] There, the Court emphasized the gravity of the offence:

> It is as well appropriate to consider the profound effect a robbery of this kind will have on the victim. One's home, particularly for the elderly, is a place of security. The ransacking of her house, including her bedroom, by two violent strangers, is an interference with her person akin to physical assault. [14]

[47] Despite the six-to-ten year range endorsed in *Fraser*, this Court in *Harris* held the statements in that case "…do not settle a range for home invasion robberies of six-to-ten years. One must look at the individual case and the mitigating and aggravating factors and determine what the appropriate sentence should be".[15]

[48] In *Harris*, this Court was signalling that it was not constrained at the upper end by the range indicated in *Fraser*. A 15 year sentence was upheld for the violent and targeted break and enter into the home of an elderly couple for the purpose of committing a robbery. The violence inflicted on the couple was life-altering.

[49] In sentencing Mr. Alcorn, the judge noted the facts in *Harris* and *Fraser* were more egregious. Furthermore, the judge had rejected the submission that Mr. Alcorn should be sentenced on the basis of having committed a home invasion, a codified aggravating factor.

[50] *Fraser* and *Harris* do not preclude sentences below six years, and it was appropriate for the judge to find they were not useful precedents for sentencing Mr. Alcorn. This Court in *R. v. Best*[16] endorsed a sentencing range of three to eleven

---

[10] 2000 NSCA 7
[11] 1997 NSCA 210
[12] *supra*, at para. 22
[13] *supra*, at para. 28
[14] *supra*, at para. 29
[15] *Harris*, at para. 62
[16] 2012 NSCA 34

years' imprisonment for break and enter into a dwelling house where s. 348.1 was found to be applicable. In *Best*, the victim was attacked in his home while asleep and was seriously injured. Those facts and the application of s. 348.1 make it distinguishable from Mr. Alcorn's case.

[51] Appropriate factors can bring a sentence for break and enter into a home below the ranges discussed in *Harris*, *Fraser* and *Best*. The particular circumstances of the offence and of the offender will determine where a case fits, and it is appropriate to recognize, as former Chief Justice MacDonald did in *Best*, that "…no case is ever the same and it would be dangerous to generalize".[17] In *R. v. Friesen*, the Supreme Court of Canada noted it has repeatedly held that "sentencing ranges and starting points are guidelines, not hard and fast rules".[18]

[52] *Friesen* re-emphasized the individualized nature of sentencing and how ranges must be viewed flexibly:

> 38 The deferential appellate standard of review is designed to ensure that sentencing judges can individualize sentencing both in method and outcome. Sentencing judges have considerable scope to apply the principles of sentencing in any manner that suits the features of a particular case…a particular combination of aggravating and mitigating factors may call for a sentence that lies far from any starting point and outside any range (*cites omitted*).

[53] In Mr. Alcorn's case the judge found aggravating circumstances justified a substantial federal sentence of incarceration. In the absence of an error in principle, it is not for an appeal court to substitute its own view of the appropriate sentence and what we might have done is immaterial. The judge made no reversible errors in sentencing Mr. Alcorn to five years for breaking into Mr. Rogers' home nor did she impose a sentence that was manifestly unfit. Her decision is to be accorded deference. No basis for appellate intervention has been made out.

---

[17] *supra*, at para. 25
[18] 2020 SCC 9, at para. 37

Disposition

[54] I would grant leave to appeal and dismiss the appeal.

Derrick, J.A.

Concurred in:

Bryson, J.A.

Beaton, J.A.

APPENDIX "A"

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN

HER MAJESTY THE QUEEN
AND
NICHOLAS ALCORN

AGREED STATEMENT OF FACTS

---

1. Mr. Alcorn has entered guilty pleas to ss. 348(1)(b), 355 and 267(a) of the *Criminal Code*. All charges occurred between June 19th and 20th of 2019.

2. On June 19, 2019, around noon, Mr. Alcorn entered Premium Auto at 308 Windmill Road, Dartmouth, NS looking to purchase a vehicle. While Mr. Alcorn's application was being approved, he was advised he could take the vehicle for a 30-minute test drive. Mr. Alcorn never returned with the vehicle. The employees of Premium Auto attended the address provided by Mr. Alcorn on the application, and spoke with an older woman who advised that Mr. Alcorn had not lived at that address for years.

3. That evening, Mr. Alcorn and [N.S.] were driving the vehicle from Premium Auto when the tire ruptured and they were no longer able to drive the vehicle. They attempted to fix the rupture but were unsuccessful. This occurred between Lemmon Hill Road and Blueberry Lane in Dean, NS.

4. Mr. Alcorn and [N.S.] began walking on Lemmon Hill Road where they viewed a home at […] with a vehicle parked in the front. This home belonged to Terry Rogers. Mr. Alcorn and [N.S.] discussed what they should do and decided they would try to take the vehicle, given that they were stuck in the middle of nowhere.

5. Mr. Alcorn entered the parked vehicle in the driveway of the home and searched for the keys to the vehicle. He was unable to locate the vehicle keys but located the house keys in the center console. Mr. Alcorn also viewed a knife in the center console. Mr. Alcorn then decided to enter the home to retrieve the key for the vehicle.

   [**Contested: Whether Mr. Alcorn brought the knife located in the center console inside of Mr. Rogers' home]**

6. Once inside the home, Mr. Alcorn looked around for the key to the vehicle but was unable to locate it. He took a cellphone he found inside the home outside to [N.S.]. They were unable to find anyone to come retrieve them, so Mr. Alcorn decided to re-enter the home to search for the vehicle key again.

7. Mr. Alcorn re-entered the home. While inside the home, Mr. Rogers, the homeowner, woke up from sleeping. This occurred at approximately 11:50-11:55pm on June 19, 2019.

   [Contested: Whether Mr. Alcorn had the knife in his hand during this interaction with Mr. Rogers]

8. Mr. Rogers began to wake up and Mr. Alcorn was hiding near the room off Mr. Rogers' bedroom. There was a light on in the room in which Mr. Alcorn was hiding, but not in the bedroom. Mr. Rogers spoke and said he knew someone was present. Mr. Alcorn then presented himself to Mr. Rogers. Mr. Alcorn told Mr. Rogers he didn't want to hurt him and that he just wanted the keys to the vehicle. Mr. Rogers told him no, but offered to take Mr. Alcorn where he needed to go. Then Mr. Rogers got up and began to get dressed and both Mr. Rogers and Mr. Alcorn walked to the kitchen.

9. While in the kitchen, Mr. Rogers asked where his cellphone was, and Mr. Alcorn advised it was outside with someone else. They then left the residence. Mr. Alcorn asked if he could drive the vehicle, but Mr. Rogers told him no, that he was going to drive. Mr. Alcorn got into the passenger seat of the vehicle and Mr. Rogers got into the driver's seat. They backed out of the driveway and picked up [N.S.] at the end of the driveway. She got into the back seat of the vehicle.

10. When they began driving away, Mr. Alcorn offered Mr. Rogers gas money to take him to Dartmouth. Mr. Rogers said he didn't want any gas money. Mr. Rogers began driving toward Cumberland County and eventually Mr. Alcorn realized that he was not heading to Dartmouth, as he requested. Mr. Alcorn asked Mr. Rogers to stop the vehicle but Mr. Rogers declined. Mr. Alcorn had the knife in hand at this time. Mr. Alcorn reached his leg over and put his foot on the brake pedal and stopped the truck.

    [Contested: Whether Mr. Alcorn obtained the knife prior to going into Mr. Rogers' home or in the vehicle before asking Mr. Rogers to stop the vehicle]

11. Mr. Rogers put the truck into park, removed the keys from the ignition, and got out of the vehicle. Mr. Alcorn also exited the vehicle and attempted to take the keys from Mr. Rogers' pants pocket while wielding the knife. Mr. Rogers resisted this, and a scuffle ensued. Mr. Rogers placed Mr. Alcorn into a position where his arms were behind his head. Mr. Alcorn eventually freed himself and obtained the keys for the truck from the

pants pocket of Mr. Rogers. During this time, Mr. Rogers obtained the cuts to his hands from the knife.

12. Mr. Alcorn then got back into the truck and left with [N.S.], driving towards Brookfield.

13. Mr. Rogers remained on the side of the road and began flagging down passing vehicles.

14. On June 20, 2020 [*sic*] at 12:36am, Gordon Trucker called 911 to report that he found a male who had his truck stolen on the side of the highway at 4814 Highway 289 in Upper Stewiacke, Nova Scotia. The male was Terry Rogers, and he had advised him that his home was broken into and that he and the individual who broke in had left his home in his truck. His truck was a 2009 black Chevrolet Silverado with a Nova Scotia licence plate, […].

15. Mr. Rogers was eventually transported to the hospital by EHS because of the injuries to his hands. He did require unrelated medical care at the time as well. Mr. Rogers did provide a statement to police while in the hospital.

16. At approximately 2:23am, Cst. Courtemanche, Cst. Renaud, Cst. Cooke and the canine unite attended Mr. Rogers' residence. Cst. Courtemanche first drove by the residence in his unmarked vehicle and no vehicle was seen in the driveway or on the property.

17. There were no lights on inside of Mr. Rogers' residence. No one was found on the property and no one was inside the residence through the windows. The front door was locked and there were no other doors to get inside of the residence. Cst. Courtemanche also checked a shed that had an unlocked padlock, and no was found inside. A baseball bat was seen on the counter by the front door, however, members learned later that this was not unusual. Cst. Courtemanche used his patrol carbine to clear the property.

18. Cst. Courtemanche made a patrol up the road and located a black Jeep Patriot, NSLP […], partly in the ditch at the intersection of Lemmon Hill Road and Blueberry Lane at approximately 2:35am. This was the vehicle that was taken from Premium Auto.

19. The front passenger side tire was removed and laying on the ground, and a donut tire was leaning against the vehicle which was sitting on a jack. Cst. Courtemanche noted that is appeared as though someone started to replace the tired but stopped.

20. Cst. Courtemanche spoke to Cp. Peter McCaron who advised of an earlier call in the evening from an anonymous complainant who stated they believed Nick Alcorn was at another location with a stolen vehicle. They stated it was a Black Jeep compass, no plate, and was heading to Truro.

21. At approximately 4:00am on June 20, 2019, Cst. Gallant advised over the radio that the RCMP had a black truck at a Circle K Irving in Sackville, NB with someone talking about her boyfriend who stole a vehicle in the Halifax area. The truck left and headed toward Halifax. This was [N.S.] and Nicholas Alcorn. The description of the vehicle matched that of Mr. Rogers' truck. Video of this incident became available and showed [N.S.] inside of the Circle K Irving.

22. On July 2, 2019 Mr. Alcorn and [N.S.] were located near Hearst, Ontario, which is approximately 10 hours north of Toronto, by members of the Ontario Provincial Police ["OPP']. The OPP members located Mr. Alcorn and [N.S.] in Mr. Rogers' vehicle still bearing the Nova Scotia licence plate. They queried the vehicle and learned it was stolen. Mr. Alcorn and [N.S.] were arrested without incident for theft and possession of the stolen vehicle. During the search of the vehicle the police seized a Samsung flip phone and a knife. Mr. Alcorn was held in Ontario. Mr. Alcorn pled guilty to possession of stolen property over $5,000.00 in Ontario and received a custodial sentence. He completed that sentence on August 9, 2019 and was placed on a 6 day remand on the Halifax charges and the Halifax Regional Police went to Ontario to collect him at the end of his sentence and brought him back to Nova Scotia.