

**CASE NO.**

Cite as: R. v. Morris, 1998 NSCA 229

**VOLUME**

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WAYNE ROGER MORRIS

(Appellant)

C.A.C. No. 144218

- and -

Halifax, N.S.

HER MAJESTY THE QUEEN

(Respondent)

CROMWELL, J.A.

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**APPEAL HEARD:**

September 10, 1998

**JUDGMENT DELIVERED:**

December 16, 1998

**SUBJECT:**

**Criminal Law - Canadian Charter of Rights & Freedoms - Search & Seizure - Challenge to Search Warrants - Amplification**

**SUMMARY:**

The police obtained a search warrant for the appellant's residence. The search discovered a 70 gram block of cannabis resin along with scales, a hunting knife and nearly \$2,000.00 in cash. At trial, the accused challenged the validity of the search. On the s. 8 *voir dire*, it was established that the Information to obtain the warrant contained two errors. The affiant indicated that he had received information from B while, in fact, B's information had been relayed to him by another officer. The affiant also swore that an informant had named the appellant when, in fact, the informant had provided only the appellant's first name, an address and a brief physical description. The trial judge refused to find the search unreasonable, holding that there were, in fact, ample reasonable grounds for the search and that the errors were made in good faith and not as part of a deliberate attempt to mislead the issuing justice. The accused was convicted and appealed to the Court of Appeal.

**RESULT:**

The appeal was dismissed.

The principles to be applied to the case are as follows:

1. The trial judge on the review of the issuance of the warrant is to determine whether the justice of the peace could have validly issued the warrant;
2. In conducting that review, the trial judge may hear and consider evidence relevant to the accuracy of and motivation for the material included in the Information to obtain a search warrant;
3. Fraudulent or deliberately misleading material in the Information does not

automatically invalidate the warrant. However, it may have this effect if the reviewing judge concludes, having regard to the totality of the circumstances, that the police approach to the prior authorization process was so subversive of it that the warrant should be invalidated. In addition, fraudulent and deliberately misleading material should be excised from consideration;

4. In assessing the validity of the warrant, the trial judge, generally, is entitled to consider all evidence bearing on the existence in fact of reasonable and probable cause shown to be in the knowledge of the police at the time the warrant was sought. However, such evidence cannot be used if it was obtained by unconstitutional means or (the Court is inclined to think) to amplify fraudulent or intentionally misleading material in the Information to obtain.

The errors in the Information to obtain did not result from a deliberate attempt to mislead the Justice of the Peace and the Information to obtain, as amplified on the *voir dire* before the trial judge, disclosed there were ample reasonable grounds for belief to justify the issuance of the warrant.

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