

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Cater, 2011 NSPC 99

Date: 20111220

Docket: 1997518 to 1997550

Registry: Halifax

BETWEEN:

Her Majesty The Queen

v.

Kyle Cater, Paul Cater and Torina Lewis

**DECISION ON THE VALIDITY OF THE SEARCH WARRANT FOR 80
CAVENDISH ROAD**

JUDGE: The Honourable Anne S. Derrick

HEARD: December 19, 2011

DECISION: December 20, 2011

CHARGES: Each Accused: Sections 86(1) x3; 88(1) x3; 95(1) x 2; 92(1) x 2; 92(2) x 1 of the *Criminal Code*

COUNSEL: Shauna MacDonald and Richard Hartlen, for the Crown

DEFENCE: Alfred Seaman, for Paul Cater

Cameron MacKeen, for Torina Lewis

Elizabeth Cooper, for Kyle Cater

By the Court:

Introduction

[1] Paul Cater and Torina Lewis have brought a section 8 *Charter* application challenging the validity of the search warrant executed at their residence. The search warrant was granted pursuant to section 487 of the *Criminal Code* by a Justice of the Peace on January 14, 2008 and was obtained on the basis of an Information to Obtain a Search Warrant (the “ITO”) sworn on that date. On January 15, 2008, under the authority of the search warrant, Halifax Regional Police searched the Cater/Lewis residence at 80 Cavendish Road, Halifax. In this decision I will refer to Paul Cater and Torina Lewis as “Cater” and “Lewis.”

[2] Three firearms and ammunition were located in the search of 80 Cavendish. The Crown is seeking to have the evidence of the firearms and ammunition admitted at the trial of Kyle Cater, Paul Cater and Torina Lewis for weapons possession charges.

[3] Cater and Lewis are asserting that their section 8 *Charter* rights against unreasonable search and seizure have been violated by the search of 80 Cavendish and that the firearms and ammunition located at the residence should be excluded from evidence pursuant to section 24(2) of the *Charter*.

[4] It is conceded by the Crown that Paul Cater and Torina Lewis had a reasonable expectation of privacy in their residence at 80 Cavendish and are therefore entitled to assert a *Charter* protected right against unreasonable search.

[5] I previously concluded that Kyle Cater has no standing to participate in this application. (*R. v. Cater*, [2011] N.S.J. No. 627, paragraphs 13 - 16)

The Cater and Lewis Challenge to the Search Warrant for 80 Cavendish

[6] Cater and Lewis have filed separate written submissions but they have advanced common themes and assertions.

[7] The submission by Cater and Lewis is that the Information to Obtain a Search Warrant (the “ITO”) is invalid on its face “in that it did not contain sufficient reasonable and probable grounds to believe that a firearm and ammunition were located” at 80 Cavendish Road as claimed by the police.

[8] Although initially alleging in their briefs that the Justice of the Peace was deliberately misled by the ITO, Cater and Lewis no longer make this assertion. They say instead that the ITO was not drafted with sufficient care to avoid creating an inaccurate impression of certain facts.

The Information to Obtain

[9] The ITO was sworn by Cst. John Mansvelt, a Halifax Regional Police (HRP) officer with nineteen years experience in policing. In October 2007 he was assigned to a Halifax Regional Police/Royal Canadian Mounted Police Federal Drug Joint Operation named Operation Intrude.

[10] According to the ITO, Operation Intrude was a joint operation between the RCMP and Halifax Regional Police to gather evidence to prosecute individuals believed to be involved in *Controlled Drugs and Substances Act* and *Criminal Code* offences associated with the drug trade.

[11] In providing a short narrative of Operation Intrude, Cst. Mansvelt characterized Kyle Cater as a drug dealer involved with managing a street-level drug trade in his capacity as an active member of the Young MOB, a group with close ties to the Spryfield MOB. He described his belief that Kyle Cater is in regular contact with “two of the Spryfield MOB’s street managers and enforcers, Jeremy LeBlanc and Shawn Shea.”

[12] This characterization of Kyle Cater as a drug dealer has been criticized by Cater and Lewis as lacking any substantiation in the ITO. Later in these reasons I will address this criticism.

[13] The ITO indicates that a Part VI authorization to intercept private communications was granted to Operation Intrude investigators on November 18, 2008 by Justice Heather Robertson with targets that included Kyle Cater. Cst. Mansvelt describes having reviewed intercepted calls between Kyle Cater and Paul Cater using numbers that were subscribed to by Barbara Cater (229-4400) and

Torina Lewis (475-3326) respectively. These calls occurred on December 7, 2008 at 1:39 a.m., 1:41 a.m., 1:43 a.m., 1:46 a.m., and 11:38 a.m.

[14] Another series of calls were described by Cst. Mansvelt as having occurred on December 28, 2008 at 4:04 p.m., 4:24 p.m. and 9:08 p.m. These calls were between the 229-4400 and 475-3326 numbers, and from a friend of Kyle Cater's to Kyle Cater (4:24 p.m.) in which the friend is told by Kyle Cater to meet him at Paul's place.

[15] Cst. Mansvelt also detailed nineteen (19) intercepted calls through December 2008 between Kyle Cater and other individuals, none of whom were Paul Cater or Torina Lewis. It was Cst. Mansvelt's belief that included in these calls were discussions about firearms. Cst. Mansvelt provided detailed reasons for his belief that in these conversations Kyle Cater and various associates were discussing firearms amongst other issues.

[16] It is these calls that Cst. Mansvelt used as the basis for claiming that Paul Cater was holding a firearm and ammunition for Kyle Cater. At paragraphs 25 – 28 of the ITO, Cst. Mansvelt expressed the following beliefs:

That Kyle Cater is an active member of the YMOB and is in regular contact with two of the Spryfield MOB's street managers and enforcers, Jeremy LeBlanc and Shawn Shea;

That Kyle Cater has a firearm kept at his father's residence for safe-keeping, and that the firearm has live ammunition in it or readily accessible for use with the firearm. (Cst. Mansvelt went on to say that "Both through the Authorization and my knowledge of recent shooting incidents that have taken place in the Halifax area I am aware that the Spryfield MOB is active in their attempts at controlling and dominating the illicit drug trade in the Spryfield area by using firearms and violence.")

That it is reasonable to believe that Kyle Cater keeps ammunition for the firearm with the firearm;

That Paul Cater is an active participant in the possession and safe-keeping of the firearm and ammunition. (Cst. Mansvelt referenced the fact that Paul Cater lives at 80 Cavendish and “contacted Kyle Cater immediately upon realizing that the firearm had been misplaced.”)

[17] As I will discuss, it is the calls of December 7 between Paul Cater and Kyle Cater and Kyle Cater and Torina Lewis that are really the heart of the application for the search warrant for 80 Cavendish Road.

The Applicable Law

[18] The authorizing Justice of the Peace granted the warrant to search 80 Cavendish Road on the basis that there were “reasonable grounds for believing that there are certain things to wit...firearm...ammunition which there are reasonable grounds to believe will afford evidence with respect to the commission of an offence against the Criminal Code of Canada that...Kyle Joseph Cater...and Paul Gary Cater...of 80 Cavendish Road, Halifax, Nova Scotia between the 6th day of December 2008 and the 13th day of January 2009...did possess a firearm without being the holder of a license under which they may possess it, contrary to section 91(1) of the Criminal Code of Canada, and that the Informant believes on reasonable grounds that the said things or some part of them are in the residence of Paul Cater situated at 80 Cavendish Road...”

[19] Section 487 of the *Criminal Code* is the authority for the 80 Cavendish search warrant. In paraphrased form, it provides as follows:

487.(1)A justice who is satisfied by information on oath...that there are reasonable grounds to believe that there is in a building...

(a) anything on or in respect of which any offence against this Act or any other Act of Parliament has been or is suspected to have been committed,

(b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence...against this Act or any other Act of Parliament,

(c) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant, or

(c.1) any offence-related property,

may at any time issue a warrant authorizing a peace officer...who is named in the warrant

(d) to search the building...for any such thing and to seize it...

[20] A search warrant for a residence, authorized under section 487 of the *Criminal Code*, must conform to section 8 of the *Charter*. The settled law is that for a search to be reasonable under section 8 of the *Charter*, it must be: (1) authorized by law; (2) the law must be reasonable; and (3) the manner of the search must be reasonable. (*R. v. Collins*, [1987] 1 S.C.R. 265)

[21] A search warrant is presumptively valid. The burden lies on the accused to displace this presumption. (*R. v. Collins*, [189] O.J. No. 488 (C.A.), page 9) The presumption of validity and the burden on the accused is acknowledged by Cater and Lewis.

[22] The law that applied in Kyle Cater's *Garofoli* application, which I decided in reasons reported as *R. v. Cater*, [2011] N.S.J. 626, is applicable to the issue of the 80 Cavendish Road search warrant:

56 The reviewing judge does not substitute his or her view for that of the authorizing judge. If, based on the record which was before the authorizing judge as amplified on the review, the reviewing judge concludes that the authorizing judge could have granted the authorization, then he or she should not interfere. In this process, the existence of fraud, non-disclosure, misleading evidence and new evidence are all relevant, but, rather than being a prerequisite to review, their sole impact is to determine whether there continues to be any basis for the decision of the authorizing judge. (*R. v. Garofoli*, [1990] S.C.J. No. 115)

[23] This standard was recently reiterated in *R. v. Morelli*, [2010] 1 S.C.R. 253:

In reviewing the sufficiency of a warrant application, however, “the test is whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued.” (*R. v. Araujo*, [2000] 2 S.C.R. 992, para. 54) The question is not whether the reviewing court would itself have issued the warrant, but whether there was sufficient credible and reliable evidence to permit a justice of the peace to find reasonable and probable grounds to believe that an offence has been

committed and that evidence of that offence would be found at the specified time and place. (*paragraph 40; emphasis in the original*)

[24] The standard is not whether the issuing Justice of the Peace should have granted the warrant to search 80 Cavendish; the issue is whether she could have done so on the basis of what she had before her. As the Ontario Court of Appeal observed in *Re Church of Scientology (No. 6)*, [1987] O.J. No. 64, if the issuing justice says she is satisfied on the evidence and issues the warrant, the reviewing judge “must not say that the justice should not have been so satisfied.” (*page 23*)

[25] In this case, for the issuance of the search warrant to be upheld, I have to find that the Justice of the Peace could have been satisfied there was “some evidence sufficient as a matter of law” that provided reasonable grounds to believe a firearm was located at 80 Cavendish Road and that Paul Cater, the resident at that address, did not have a license to possess it. (*Re Church of Scientology (No. 6)*, *page 23*)

[26] It is not disputed that 80 Cavendish Road was Paul Cater’s residence and that Paul Cater did not have a valid firearms license. The Defence submissions against the issuance of the warrant are aimed at the heart of the warrant, the information from the intercepts that was supplied to the issuing Justice as support for a reasonable belief that a firearm was being held at 80 Cavendish.

[27] The Defence has taken aim at the inferences Cst. Mansvelt has drawn from the intercepted communications between Paul and Kyle Cater and Kyle Cater and Torina Lewis on December 7, characterizing Cst. Mansvelt’s interpretations of these conversations as mere “hunches.” However, the presumptive validity of the search warrant means that the Justice of the Peace must have drawn her own inferences about those telephone calls, which she was entitled to do. (*R. v. Durling*, [2006] N.S.J. No. 453 (C.A.), *paragraph 27*) The pivotal question then is were these inferences she could reasonably draw?

[28] It is the function of the issuing justice to draw reasonable inferences from the evidence supplied in the ITO. (*R. v. Shiers*, [2003] N.S.J. No. 453 (C.A.), *paragraphs 13 and 14*)

[29] It is my view that if the inference could have been reasonably drawn that the discussions between Paul and Kyle Cater and Kyle and Torina Cater on December

7 were in relation to a firearm, this would constitute compelling evidence of the commission of a criminal offence – possession of a firearm without a valid license, an offence contrary to section 91(1) of the *Criminal Code*, as contemplated by Cst. Mansvelt’s ITO. Compelling information is required to justify a warrantless search (*R. v. Debot*, [1989] 2 S.C.R. 1140, paragraph 53) but where that information comes from intercepted communications pursuant to a Part VI authorization, considerations of credibility and corroboration, so relevant where the source of the information is a tipster, in my view will potentially be less relevant.

The Heart of the Matter – The Intercepted Calls

[30] The first December 7, 2008 call of interest to Cst. Mansvelt occurred at 1:39 a.m. Paul Cater calls Kyle Cater and tells him “someone walked off with Tracy.” Kyle is told to get hold of Jordan Jones and to tell him to “get his ass back down here now!” Kyle’s response is to tell Paul: “Don’t be fuckin’ with me”, to which Paul replies: “I’m not fuckin with you. Would I be calling you this late at night if I was fuckin?”

[31] At 1:41 a.m. Kyle calls an unknown male and asks who else was there. The male tells him that the other two are on their way back and the only one missing is Jordan. The unknown male tells Kyle that Chelsea’s friends are there and then informs him that Torina is on the other line.

[32] At 1:43 a.m., Kyle calls Torina, Paul Cater’s wife. She tells him that two of them are back in the house; that she grabbed them and brought them back in the house. Kyle asks: “It’s still not back?” Torina replies: “No, it’s not, bud, and I just told one of them that they better use it on me if they did and didn’t all the way here: I’m here and they are with me.” Kyle asks: “How is it gone, like how is it gone? How would they even know it’s there?” Torina replies: “Cause, you know, you know where, you know your father always like looks on the computer and Tracy likes looking on the computer and stuff on the side? You know how Tracy usually pretty much looks at the Internet with Paul?” Kyle responds with, “Yeah” and Torina continues: “Well, right beside there.” Kyle says: “Well, what and the fuck?” Torina tells him: “There is only three people in my house, bud. The rest of them are already here, have been patted down. There is only three people that left my house. One was Jordan Jones; the other two I just picked back up on Leiblin

Park and brought them back here.” When Kyle asks who the other two were, Torina replies: “The two that were here when you and Terrell were here; Justin Dempsey and his buddy.”

[33] Paul Cater calls Kyle at 1:46 a.m. and tells him: “She’s home, she made it home safe.”

[34] The final December 7, 2008 call is at 11:38 a.m. when Kyle Cater calls Torina Lewis and asks: “So, that’s back, right?” “Yeah” says Torina and Kyle asks her where it was. She tells him: “Don’t even, your father’s a fucking idiot.” Kyle asks if he misplaced it and Torina confirms that he did. Kyle asks if she realizes how scared they had him last night. She replies by asking him if he understands how scared she has two other people last night. Kyle tells her that he was so scared that he was saying that they didn’t give a fuck, that it would come back on its own. Torina tells Kyle she cared and feels like a goof; that those two boys were scared “as fuck.” She explains that the boys had things in their face. Kyle tells her he will probably be up tonight.

[35] Cst. Mansvelt explained in the ITO what he believed the December 7 telephone conversations indicated:

- (1) That “Tracy” was a nickname for a firearm that was at Paul Cater’s home at 80 Cavendish Road;
- (2) That Torina had brought back the persons who had been in the house prior to the firearm going missing;
- (3) That Kyle Cater did not understand how the firearm went missing and how any of the parties in the home would have even known that it was there;
- (4) That Torina explained to Kyle using guarded language where the firearm usually is kept and where they believed it to have been. Torina described an area near the computer and told Kyle that it was right beside there;
- (5) That Paul advised Kyle (1:46 a.m. call) that he had located the missing firearm;

(6) That Torina explained to Kyle (11:38 a.m. call) that after she had brought the young persons back to 80 Cavendish to question them about the missing firearm they held weapons up to [their] faces while questioning them about it. After Paul Cater located the firearm after misplacing it, Torina felt bad about what occurred to the two people.

[36] Cst. Mansvelt referred in the ITO to another telephone exchange between Kyle Cater and Paul Cater at 9:08 p.m. on December 28, 2008. In this call from Paul to Kyle, Paul wants to know what Kyle did “with that?” Kyle tells him it is in the same spot, the rose, the rose on the side. Paul replies: “Oh, okay, okay, the rose.” Cst. Mansvelt explained in the ITO his belief that Kyle was telling his father that the firearm has been placed in a location within Paul Cater’s residence and that location has a rose on its side. Cst. Mansvelt indicated his belief that the reference to “the same spot” was an indication that they had used this location on previous occasions to store firearms.

[37] Cater and Lewis have argued that what Cst. Mansvelt advanced in the ITO as his interpretation of the conversations constituted nothing more than mere hunches and that the “ambiguous” discussions could not support a reasonable inference that the subject under discussion was a temporarily misplaced firearm. In the submission of the Defence more is required to ground the issuance of a search warrant and intrude on the sanctity of a private residence.

[38] Despite the Defence vigorous submissions that the cryptic references in the December 7 and December 28 telephone calls do not support the inference that Paul, Kyle and Torina were talking about a firearm or firearms, I disagree. The calls can be reasonably inferred to indicate this, providing the reasonable and probable grounds for the issuing Justice to have believed that Paul Cater and Torina Lewis were storing a firearm at 80 Cavendish Road. In the December 7 conversation between Kyle Cater and Torina Lewis at 1:43 a.m., what had been referred to previously by Paul Cater in the 1:39 a.m. call as “Tracy”, is identified as “it.” There is nothing in the conversations that suggests “Tracy” was a person. “It” suggests “Tracy” was an object. There is also the reference by Torina Lewis in this call to people having been “patted down” which supports a reasonable inference that what had Paul, Kyle and Torina so worked up was not a missing

person. It would have been reasonable, from the level of concern expressed and the guarded references in the intercepted calls as disclosed by the recitals in the ITO, for the Justice of the Peace to have been satisfied that what was being discussed was a firearm that had been stored at 80 Cavendish.

[39] The fact that Paul Cater and Torina Lewis have no criminal records and, until the intercepts, were not on the police radar is irrelevant. The intercepts and the reasonable inferences drawn from them were enough to put Cater and Lewis on the police radar. Even the home of an innocent third party custodian can be entered with a valid, lawfully obtained search warrant. (*R. v. Sanchez, [1994] O.J. No. 2260 (G.D.), paragraph 39*)

[40] I will now discuss submissions made by Cater and Lewis that the ITO was flawed by virtue of what it did and did not contain.

The Allegation About Irrelevant Information in the ITO

[41] As I mentioned earlier in these reasons, the content of a number of other intercepted calls was detailed in the ITO by Cst. Mansvelt. These do not deal with Paul Cater, Torina Lewis or 80 Cavenish Road. They do suggest some degree of illegal activity by Kyle Cater, including in relation to firearms. Given the nature of the telephone calls of December 7 between Paul and Kyle and Kyle and Torina, and the December 28 call between Paul and Kyle, the inclusion of these Kyle Cater-related calls is not irrelevant or misleading. Obviously by themselves they could not have constituted a basis for obtaining a section 487 search warrant for 80 Cavendish. Offered as context for the Paul-Kyle-Torina December 7 calls, they are a relevant inclusion in the ITO.

[42] The Kyle Cater-related intercepted communications included in the ITO by Cst. Mansvelt support reasonable inferences about Kyle Cater's involvement with guns. For example, Cst. Mansvelt describes the interception by room-probe of a conversation on January 12, 2008 at 7:01 p.m. Present during the conversation were, Kyle Cater, Tim Stewart, Jeremy LeBlanc and Matthew Glavine. They are intercepted talking about where an item is. Kyle Cater asks where "the other thing is." LeBlanc says that Little J has it. Cst. Mansvelt goes on to indicate: "A noise in the background believed to be the racking action of a gun as well as a clicking sound similar to a trigger being pulled and the hammer dry-firing can be heard

during the conversation.” The intercepted conversation then focuses on the whereabouts of someone of interest to Jeremy LeBlanc and Kyle Cater, a man whom Cst. Mansvelt indicated was thought to have shot a member of the group Mr. LeBlanc and Kyle Cater are believed to be affiliated with.

[43] These intercepts are contextual in nature and relevant to the overall picture provided to the Justice of the Peace. I do not accept that they did not belong in the ITO.

Bald Assertions About Kyle Cater

[44] The ITO contains a discussion about Operation Intrude, and, includes in paragraph 8 (c), the following paragraph about Kyle Cater:

Kyle Joseph Cater (Kyle Cater) is an active member of the Young MOB (YMOB), The YMOB is a group of younger males that is closely associated to the SMOB and acts in concert with the SMOB to traffic in controlled drugs and substances in and around the Spryfield area. Kyle Cater is active in managing other young males for the street-level distribution of controlled drugs and substances. Kyle Cater answers to Jeremy LeBlanc and Shawn Shea and uses acts of violence and intimidation to gain control of drug trafficking and eliminate competition in the drug trade. He is also responsible for the recruitment of street level dealers.

[45] As noted by the Defence, the ITO does not contain any evidence of Kyle Cater’s drug trafficking activities. There is only one intercepted communication that Cst. Mansvelt inferred was about drugs. This inference was drawn from a proposal by Lamar Sykes to Kyle Cater on December 27 that he can come up and meet Kyle “now”. Kyle responds by telling Sykes “ain’t nothing going on though.” Cst. Mansvelt stated his belief, based on monitoring numerous calls, that “ain’t nothing going on” was a reference to “not having any controlled drugs or substances on their person.”

[46] In my view the criticism that the ITO did not substantiate the characterization of Kyle Cater as a drug dealer is a valid one. It does not however advance the Defence challenge to the search warrant. The references to Kyle Cater as a drug dealer can be excised from the ITO without damaging its ability to support reasonable inferences about the presence of a firearm at 80 Cavendish. The

search warrant was going after a firearm and ammunition reasonably believed to be with it, not drugs. There is ample evidence remaining, even with the removal of any allegations that Kyle Cater was a drug dealer, to support the reasonable and probable grounds required for the issuance of the search warrant to search 80 Cavendish for a firearm and ammunition.

Justice of the Peace Asked to Rely on Information Not Included in ITO

[47] The Defence raised concerns about Cst. Mansvelt indicating the following at paragraph 23 of the ITO: “After reviewing numerous calls on Kyle Cater’s intercepted calls I know that he frequents his father’s house on a regular basis and that he is in contact by telephone with his father almost daily.”

[48] The Defence has made the following comments about this statement:

- (1) That the frequency of any visits to Paul Cater’s residence at 80 Cavendish by Kyle Cater can be explained by the fact of their relationship;
- (2) That any illegal activity by Kyle, even if known about by Paul, does not prohibit them having a relationship;
- (3) That even if Paul Cater knew of any illegal activity on the part of Kyle Cater, which Paul Cater does not admit to, this does not implicate him in the illegal activity; and
- (4) That many intercepted communications between Paul and Kyle were not described in the ITO. This, says the Defence, is misleading because the Justice of the Peace was asked “to draw a conclusion based on the frequency of visits and phone calls made between Paul and Kyle, yet [the police] do not include those intercepts they say show constant communication.”

[49] I find that Cst. Mansvelt’s description of there being evidence of frequent in-person and telephone contact between Kyle and Paul Cater confirms a close connection between father and son. This is consistent with the tenor of the December 7 telephone calls between Paul and Kyle and Kyle and Torina about

“Tracy” disappearing and then being found. Again, it is not evidence that by itself could have supported the granting of a search warrant. It is connective-tissue evidence that goes to support there being reasonable and probable grounds for believing that Paul Cater was holding a firearm and ammunition at 80 Cavendish for his son.

[50] As for the Defence complaint that there is no detail in the ITO about the “numerous calls” between Kyle Cater and his father, the focus for a reviewing judge is on the sufficiency of the information provided, not on what else might have been included, especially where the additional facts would not have affected the issuance of the warrant. (*Canada v. Russell*, [2010] N.S.J. No. 472 (S.C.), paragraph 43; *R. v. Yorke*, [1992] N.S.J. No. 474 (C.A.), page 8; *R. v. Ebanks*, [2009] O.J. No. 5168 (C.A.), paragraph 43)

Failure by Police to Conduct Any Investigation to Corroborate Their Beliefs About the Nature of the December 7 Intercepts

[51] The Defence has not indicated any basis in law for requiring the police to conduct an investigation into the meaning and significance of the December 7 intercepts. The police listened to the intercepts. They had the right to do so pursuant to a Part VI authorization granted on the basis of a 247 page Affidavit and ITO. Cst. Mansvelt indicated it was January 12, 2009 when he reviewed the intercepts he referenced in the ITO. He concluded that the December 7 calls related to a firearm. He further formulated the belief, based on the information obtained through investigative means, that, as stated in paragraph 28 of the ITO and referring to 80 Cavendish: “...Paul Cater is an active participant in the possession and safe-keeping of the firearm and ammunition as he resides there daily and contacted Kyle Cater immediately upon realizing that the firearm had been misplaced.”

[52] Cst. Mansvelt’s belief was based on the tense, urgent phone calls in the small hours of December 7 and the surrounding circumstances revealed by the intercepts relating to Kyle Cater, including intercepts that showed frequent contacts by Kyle Cater with his father by telephone and at his residence in person. The inferences Cst. Mansvelt drew and put forward to the issuing Justice of the Peace were reasonable. The issuing Justice was entitled to accept those reasonable

inferences based on her review of the evidence in the ITO. There is no basis for suggesting that the police were required to undertake any further investigation before seeking the search warrant for the Cater and Lewis residence.

[53] By the time the ITO for the search warrant request for 80 Cavendish Road was sworn on January 14, 2009, it had already been determined that “Operation Intrude members would be executing eight search warrants in relation to “an operational takedown for numerous CDSA and Criminal Code offences.” (paragraph 29, ITO) Cst. Mansvelt went on to indicate: “The takedown will be in concert with search warrants and arrests being effected by members of the Halifax Regional Integrated Major Crime Unit for numerous Criminal Code offences of members of the Spryfield MOB including attempted murder and firearm offences.” Even if there had been investigative options for gathering further evidence to interpret the intercepts the police would have been entitled to determine there was no time to do so as the operation, which the targets would have been unaware of, was about to reveal itself. I find there is nothing in law that would have required the police to delay the execution of the Operation Intrude search warrants in order to undertake further investigation before seeking a warrant for 80 Cavendish Road. As I noted earlier, there is no need for corroboration where reasonable inferences can be drawn directly from authorized interceptions of private communications.

[54] On this point, I will make a further comment. Cater and Lewis have described the obtaining of a search warrant for 80 Cavendish on the basis of inferences drawn from intercepted conversations as setting a “very dangerous precedent.” I do not accept this assertion. Search warrants for homes are granted quite routinely on the basis of information that includes evidence from confidential police informants and/or tipsters. Here the evidence is the actual conversations of the individuals whose privacy rights are in issue. Subject to the requirement for any inferences to be reasonable ones, and the likely need for context, this does not strike me as a poorer grade of evidence for obtaining a search warrant.

Conclusion

[55] In view of my determination that there were reasonable and probable grounds for the issuance of the search warrant for 80 Cavendish Road I do not need

to deal with section 24(2) of the Charter. The three firearms and ammunition seized from 80 Cavendish are admissible in evidence at this trial.