

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Taylor*, 2018 NSPC 41

Date: 2018-07-24

Docket: 2930647

2930648/2930649

Registry: Amherst

Between:

Her Majesty the Queen

v.

Walter Francis Taylor

DECISION

Judge: The Honourable Judge Rosalind Michie

Heard: 23 May 2017, 9 March 2018 & 21 March 2018, in Amherst,
Nova Scotia

Decision: 24 July 2018 (oral)
9 November 2018 (written)

Charges: Sections 5(1), 5(2) and 4(1) CDSA

Counsel: Mr. Douglas Shatford, for the Crown
Mr. Robert Rideout, for the Defence

By the Court:

[1] The accused is charged with three offences that arose as a result of essentially a chain of events from a traffic stop conducted on a Mr. Jeffrey Gallagher and a subsequent search of the accused, Walter Taylor's residence and person on November 18th, 2015 in Amherst, Nova Scotia. So the first count, count one, was he was alleged to have trafficked in a Schedule I drug, specifically methamphetamine, contrary to section 5(1) of the *Controlled Drugs and Substances Act*. From now on, I will call it the *CDSA*. Count two was possession of a Schedule I drug, again methamphetamine for the purpose of trafficking, contrary to section 5(2) of the *CDSA*, and then thirdly a charge of possession of marijuana, a Schedule II drug, for the purpose of trafficking. And I will get into that a little bit later, at the end of the evidence the crown conceded there wasn't sufficient proof to make out the trafficking charge, and invited a conviction for indictable possession of marijuana, and defence has done the same, and I'll speak to that at the end of the decision.

[2] At issue in this case is whether the crown has met the burden of proof beyond a reasonable doubt on the charges. The defence does not dispute the possession of methamphetamine and marijuana, as alleged in counts two and three,

but asserts that they were for personal use only, and not for the purpose of trafficking. The defence denies trafficking methamphetamine as alleged in the first count, and that is the matter dealing with Mr. Gallagher. The defence also stipulated that identity was not at issue.

[3] Credibility is an important factor in this case, and it will be determinative of my decision in this matter.

[4] The onus during a criminal trial begins and ends with the prosecution having to prove the guilt of an accused beyond a reasonable doubt. Everyone charged with a criminal offence is presumed innocent, and that presumption remains throughout the whole of the trial, unless and until the court is satisfied that the charge has been proven beyond a reasonable doubt. And of course those are principles taken from *R. v. Lifchus*, [1997] 3 SCR and *R. v. Starr*, [2000] 2 SCR 144, from Supreme Court of Canada, and they almost don't bear repeating, we speak of them so often.

[5] The prosecution's burden of proof never shifts during the trial. In this case, if at the end of my consideration of the evidence and submissions I am not satisfied that the prosecution has proven any element of the offence charged beyond a

reasonable doubt, and more specifically, if I have reasonable doubt that the person committed any of these offences, he will be acquitted of these charges.

[6] A reasonable doubt is not an imaginary or frivolous doubt. It must be based upon reason and common sense, and it logically derives from the evidence or the lack of evidence adduced during the trial. While likely or even probable guilt is not enough to meet the criminal standard, proof to an absolute certainty is inapplicable and unrealistic. The Supreme Court of Canada has cautioned that there is no mathematical precision to proof beyond a reasonable doubt, but it lies much closer to absolute certainty than it does to proof on a balance of probabilities, or the civil standard. If, after considering all of the admissible evidence, I am sure that the defendant committed the alleged offences, I must convict him, since this demonstrates that I am satisfied of his guilt beyond a reasonable doubt. Likewise, if I am not sure, then I have a reasonable doubt and an acquittal must follow.

[7] I am aware that I can accept some, all or none of what a witness says. Given that credibility is a central issue in determining whether or not the prosecution has met its burden of proof, I must apply the principles articulated by the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 SCR 742, as applied and explained by subsequent cases and commentary. First, I cannot properly resolve this case by

simply deciding which conflicting version of events is preferred. It's not a balancing act, deciding which witness I prefer. So *W.(D.)*, (*supra*) tells us that first, if I believe the evidence of the accused, obviously I must acquit. Number two, if I do not believe the testimony of the accused, but I am left with a reasonable doubt by it, I must also acquit. Three, even if I am not left in doubt by the evidence of the accused, I must ask myself, on the basis of the evidence which I do accept, am I convinced beyond a reasonable doubt by that evidence of the guilt of the accused? And fourth, finally, if I am left in doubt where I don't know who or what to believe, then I am by definition in doubt, and the accused is entitled to the benefit of that doubt. Having said that, however, the accused's evidence is not considered in isolation. It is part of the whole of the evidence that I have heard and must consider.

[8] In the next part of this decision, I will outline some of the evidence and I will make determinations as to weight or the significance of the facts in evidence. I will also provide an assessment of some of the oral testimony, with references to the evidence taken. Although I may not refer to all of what a witness said, I listened to each witness carefully, I took lengthy notes and I assessed the witness' testimony for intrinsic and extrinsic consistency, plausibility, balance, possible

interest and their ability to observe, recall and communicate. I considered all exhibits in great detail.

[9] With respect to the evidence and findings of fact, the crown called six police witnesses. The accused testified in his defence. In the midst of the crown's case, a *voir dire* was held to determine the voluntariness of the statement that Mr. Taylor, the accused, provided to Constable Jason Galloway, and that was a blended *voir dire*, so the evidence was admissible both for the purposes of the *voir dire* and in the trial. After the video was played in court, the voluntariness of the statement was admitted by defence, and it was accordingly admitted into evidence as being made freely and voluntarily to that person in authority, Constable Galloway.

[10] The first crown witness to testify was Constable Joshua Lynds, who testified he was a member of the Amherst Police Department since December 2005, and he at that time was working, or seconded to the Cumberland Integrated Street Crime Enforcement Unit, or SCEU. He testified his unit investigates street level drug trafficking. In October 2015, he testified that he and another member of the SCEU received information that Walter Taylor was trafficking speed, or methamphetamine tablets. The information they received was that he was residing between addresses at Brentwood Estates and Russell Street in Amherst. Based on

the information that the members of the unit received, they commenced surveillance of Mr. Taylor between 33 Brentwood Estates and 44 Russell Street, unit A, Amherst. They also conducted database checks. The surveillance was conducted on the following dates: October 21st, 28th, 30th, November 4th and November 6th, 2015. The officer testified the surveillance was conducted to corroborate the information that the unit obtained about Mr. Taylor. The surveillance confirmed that Mr. Taylor was present between 33 Brentwood Estates and 44 Russell Street, unit A, Amherst, and that two vehicles were being operated by Mr. Taylor and were present at both residences as described by information that Constable Lynds had received.

[11] On November 18th, 2015, members of the Street Crime Unit, including Constable Lynds, Corporal Ellis, Constables Munn, Landry and Galloway, were on duty conducting surveillance on Mr. Taylor at his residence at 44 Russell Street, unit A, Amherst. A blue Honda Civic was noted to be present in the yard, which had been described in the information as having been used by Mr. Taylor while he was conducting drug sales, and being used generally to drive around Amherst. That was the information that they had.

[12] Constable Lynds had very limited observations of Mr. Taylor personally during the November 18th surveillance, but he was in communication with the other members of the Street Crime Unit via police radio. He heard a transmission at 8:20 p.m. that Mr. Taylor had left his residence in a blue car and that he had traveled to the Tim Horton's in downtown Amherst and parked in the back parking lot. Constable Lynds pulled into the same parking lot and confirmed the presence of the vehicle in the parking lot, although he was unable to identify who was driving the vehicle. A few minutes later, Constable Lynds testified that another vehicle, another Honda arrived and parked next to the blue Honda Civic, and that the other surveilling SCEU members had indicated this to him via police radio. Both males were noted to have exited their respective vehicles, and Constable Lynds observed a brief interaction between the two men outside the vehicles in the parking lot. Both men entered the Taylor vehicle, as he described it, and remained in the vehicle for approximately two minutes, by his estimation. The second individual then exited Mr. Taylor's vehicle, re-entered his own vehicle and left the area. The vehicle was then stopped by other members of the Street Crime Enforcement Unit, and that person was arrested for possession of methamphetamine. Afterward a search of the vehicle revealed the presence of

methamphetamine tablets. Constable Lynds was not present for the search of the vehicle.

[13] Constable Lynds returned to the office to prepare the application to obtain a search warrant, which was submitted to the Justice of the Peace Centre and authorized that same evening. The search warrant was marked as exhibit number one, but the information to obtain was not exhibited, as it was sealed and there was no application by defence counsel to have it unsealed and redacted. The accused did not challenge the sufficiency of the information to obtain the warrant, pursuant to section 8 of the *Canadian Charter of Rights and Freedoms*.

[14] A search warrant is presumed to be valid. The applicant bears the burden to establish that there was an insufficient basis for issuing the warrant, and that comes from *R. v. Collins*, [1987] 1 SCR 265 and *R. v. Campbell*, 2010 ONCA 588, as well.

[15] The burden of proof lies with the applicant to satisfy the court on a balance of probabilities that there has been a *Charter* infringement, such that a remedy under section 24(2) of the *Charter* may be granted. And again, that comes from *Collins*, (supra). In this case, there was no challenge to the basis of the issuance of the warrant, and I find applying the presumption of validity, and after review of the

warrant itself, that it is a valid warrant to search Mr. Taylor's premises at 44 Russell Street, Amherst.

[16] Once the search warrant was approved, Constable Lynds testified that it was executed by members of the Street Crime Enforcement Unit that same night. Constable Lynds had no contact with Mr. Taylor, and didn't participate in the execution of the search warrant, or locate any items.

[17] When the other members attended 44 Russell Street to execute the search warrant, only Mr. Taylor's father was present in the residence. Constable Lynds presented the search warrant to Mr. Taylor's father, and he remained with him in the kitchen during the search, so he was not involved in the search.

[18] On cross examination, Constable Lynds recounted the results of the various surveillances of Mr. Taylor's residence, which were as follows: October 21st, 2015, he observed the residence at 44 Russell, Sunfire car registered to John Taylor, father of the accused. Walter Taylor was not present on that date. October 28th, the same. 33 Brentwood Estates. The constable saw a blue Honda Accord in the driveway. No traffic was noted. October 30th, 2015, blue Honda Accord was parked in the yard. He testified no other, there were no other observations of relevance noted, and he was unable to say how long the vehicle, the blue Honda

was in the parking lot. For the dates covered off by Constable Lynds, there were no vehicles observed to be coming or going, he acknowledged when asked by defence. Constable Lynds testified the surveillance was being done to corroborate Mr. Taylor's presence at those two addresses.

[19] Again, on November 4th, 2015, 33 Brentwood. Constable Lynds testified that the accused was present. He left in a blue Honda Accord, left and went to 44 Russell Street. Mr. Taylor's father's vehicle was there, and he was working on the home doing some carpentry work. He was surveilling, he testified, three to four trailers away and had a clear view. It was dark, there were no shades on the trailer and it was illuminated. He could see inside clearly, and he could see the front and the side of the trailer. He acknowledged, when asked by defence, that he observed no drugs or evidence of trafficking.

[20] November 6th, 2015, the accused was doing carpentry work at 33 Brentwood Estates. A blue Honda was parked in the yard. Mr. Taylor left when the work was done and returned to 44 Russell Street, apartment A, and there was no vehicle traffic noted.

[21] The surveillance corroborated the information, according to Constable Lynds, that was received regarding which residence Mr. Taylor was using as his

home and living at. He indicated that surveillance takes time, and that it's often done on multiple occasions. Constable Lynds did not note how long he was there on each occasion, and he testified that the ultimate goal was to determine which residence Mr. Taylor was living in.

[22] He testified that Walter and his father John Taylor were listed at both addresses on different documents in different databases. The police had received information that drug activity was taking place at both residences. The police did not know that there was a rental property. They determined through surveillance that Mr. Taylor often spent the night at 44 Russell Street, and they knew he was spending nights there by November 6th, 2015, and they followed him on two occasions.

[23] There were no further observations beyond the previous surveillance.

[24] Constable Lynds noted that due to resource and other commitments, it is often difficult or impossible to do extended periods of surveillance.

[25] Constable Lynds testified that a search warrant was served on Mr. Taylor, senior, who lived at 44 Russell Street. He had a small bedroom in the home, and Mr. Taylor confirmed that he lived there with his son and his son's wife, and that

he had control of the premises at the time. Mr. and Mrs. Taylor had been arrested at the home previous to the search warrant being executed.

[26] Constable Lynds indicated that he was not involved in the search of the vehicle incident to arrest.

[27] I accept Constable Lynds' evidence. It was given in a clear and logical manner. His testimony didn't change with cross examination. His recall was good, and I found his evidence to be given in a fairly balanced and consistent manner.

[28] The next crown witness was Corporal Christal Ellis. She also testified that she was an R.C.M.P. officer working out of the Street Crime Enforcement Unit in Amherst R.C.M.P. detachment. On November 18th, 2015 she testified that she was involved in her regular duties on the Street Crime Enforcement Unit, and she was participating in surveillance at downtown Tim Horton's in Amherst. They were watching the accused, Walter Taylor, "make a meet", in her words, with another man. They met in Mr. Taylor's car for a short period of time, then the other man got out of Mr. Taylor's car, returned to his own car and drove away.

[29] Corporal Ellis testified she followed behind another police vehicle with other SCEU members, who initiated a traffic stop of the driver, later identified as

Jeffrey Gallagher. Mr. Gallagher was arrested, but Corporal Ellis qualified that she had no direct involvement with the driver of that vehicle. She dealt with the five-year-old child who was in the vehicle, in the back seat, when the traffic stop was made. Corporal Ellis testified that she made arrangements for someone to come pick up the child and get the vehicle towed back to the office, where she subsequently searched it. The search resulted in the discovery of what she termed a “dime bag”, or a clear Ziploc bag with a logo of a red marijuana maple leaf, or maple leaf, but it was a marijuana leaf, and that the bag contained ten methamphetamine tablets. It was later tested and confirmed to be methamphetamine. It was located on the driver’s side floor of the vehicle.

[30] Corporal Ellis testified that she was the exhibit custodian, and she seized the methamphetamine tablets and a few other items from the vehicle. A sample of the tablets were taken and sent to the lab in Halifax, and it was returned with a certificate of analyst and identified as methamphetamine, and caffeine as well, and I point the record to exhibit five for reference on this.

[31] Corporal Ellis also testified that she took photographs at various locations, including the inside of Jeffrey Gallagher’s car, the inside of Mr. Taylor’s residence at 44 Russell Street, and then back at the Amherst R.C.M.P. detachment. She then

prepared a photo book, which was qualified through the witness and introduced as exhibit four. Originally there were objections that it should be introduced for identification purposes only, and ultimately defence counsel objected to the admissibility of some of the photographs, but the exhibit was introduced and admitted. I indicated that as trier of fact, my role will be to assess those photographs and apportion the appropriate weight to be given to them.

[32] Corporal Ellis provided a narrative of the photos, as both the photographer and the exhibit custodian, and it is useful for the purposes of introducing the exhibits to recount her evidence. The first ten photos depicted the inside of Jeffrey Gallagher's car.

- Photos one and two were the ten tablets of methamphetamine in the Ziploc bag with the maple leaf, located in the vehicle on the floor by the police.
- Photo three depicted Mr. Gallagher's iPhone.
- Photo four were syringes located in the console of Mr. Gallagher's vehicle. They were not seized, so they do not factor into my consideration of the evidence.

- Number five again, a tube containing white powder and snorting straw, not seized, not tested.
- Six, a second photo of the same tube and straw.
- Photo seven depicted a gold keychain, a tube with a compass containing one and a half tablets of a substance which was not analyzed
- The same with eight, which was also depicted in photo seven.
- Photo nine was a photo ID card of Jeff Gallagher with his name on it.
- Photo number ten was again another photo ID card.

[33] Corporal Ellis testified she was only involved with the search and seizure and photography for the Gallagher vehicle, that she had no involvement with Mr. Gallagher himself. After the search of the Gallagher vehicle was conducted, other members prepared the application for a search warrant. Corporal Ellis testified she later saw the search warrant, which was issued to search Walter Taylor's residence for drugs. She attended the residence at 44 Russell Street, Amherst. She testified that she was the exhibit custodian in this case as well, and she took photographs of the residence, which were photos 11 to 40 in the photo book, of exhibit number four.

- In particular, photo 11, a photo of Mr. Taylor's living room, pre-search.
- Number 12, the same living room, pre-search. She testified that present at the search were herself, Corporal Ellis, Constable Lynds, Constable Galloway, Constable Landry, Munn, and Aaron Graham.
- Photo 13 was the table in the accused's living room containing a "dime bag", or a Ziploc baggie with three white pills, two in the bag, one on the table.
- Photo 14 depicted the same thing.
- Photo 15 showed a sandwich bag containing 6.5 grams of marijuana on the living room table, located by Constable Galloway.
- Photograph 16, a small glass container with white powder and a straw, located in the living room coffee table, not tested.
- Photo 17, a green and a clear plastic pill crusher with white powder residue on it. On the end of the pill crusher were two small empty two-by-two Ziploc bags, described as "dime bags", with the red marijuana maple leaf.

- Photo 18, “roaches”, meaning small ends of rolled smoked, green leafy plant-like substance with residue found on the coffee table.
- Number 19, plastic tobacco containers on the floor in the living room area, between the couch and the fireplace. One of the containers contained 27.2 grams, of a green leafy substance which was tested, but no notice of intention to produce the certificate of analyst was served on the accused, so that was not tendered as evidence. The other container contained 340 methamphetamine tablets. They were done up in small two-by-two Ziploc bags, each containing ten tablets with the red marijuana maple leaf on the front. The tabs were tested, and they were depicted in photos 20, 43 and 44, and they also depict the same tobacco container. The 340 methamphetamine tablets were introduced as exhibit six. The certificate of analyst, the number was 1531436M, plus the sample of the tablets were returned as containing methamphetamine and caffeine. Exhibit six is also shown in photo 19 with the lid on and photo 20 with the lid off.
- Photo 20 is the same as 19.
- Photo 21 is a similar tobacco container located on the floor, under the coffee table in the living room. It had no lid on it, and it contained 130

methamphetamine tablets, broken down into 13 bundles of ten tablets, packaged again in the small Ziploc baggies with the marijuana maple leaf, some with the marijuana maple leaf, seized and analyzed, and marked as exhibit seven, certificate number 1531435, the Health Canada certificate, plus the drug sample. The certificate confirms the drug is methamphetamine, and as well caffeine.

- Photo 22 shows a decorative pin on the mantle, contents not tested.
- Photo 23 depicted the same thing as photo 22.
- Photo 24 is a digital scale with residue of a green leafy substance on it.
- Photo 25, at this point the photographs were taken in Mr. Taylor's bedroom area, where the green and white pill crusher was photographed.
- Photo 26, the same pill crusher.
- Photo 27, plastic bag found at the end of the pill bottle in photo 25.
- Photo 28, the inside of Mrs. Taylor's purse, which was not seized.
- Photo 29, small plastic Ziploc bag, marijuana maple leaf, located in an Advil bottle, not analyzed.

- Number 30, Tammy Taylor's ID, located in the purse, not seized.
- 31, a photo of a closet area in Mr. Taylor's bedroom.
- 32, a basket located on a shelf containing 300 dollars in 100 dollar bills, plus 20 dollars on top of a cheque book, addressed to Mrs. Taylor, seized and exhibited as exhibit number eight, also depicted in photograph 33.
- 34 was 3.4 grams of a green leafy substance, not tested.
- 35 two cans of WD40 and two Orange Crush cans with hidden compartments inside them with nothing located inside.
- 36, a headboard in the bedroom with 12 grams of green leafy substance, not analyzed.
- 37, envelope located under the mattress in the master bedroom containing 365 dollars in Canadian currency, and one U.S. 20 dollar bill, tendered as exhibit nine.
- Photo 38 was a photo of the freezer in the kitchen. Inside the door of the freezer was a Duncan Hines icing container containing 170 methamphetamine tablets, round in shape, bundled in 17 bundles of ten tabs

in “dime bags”, entered as exhibit ten, and contained the drug sample certificate number 1531434 and analyzed as methamphetamine and caffeine.

- Photo 39 was the kitchen freezer again, the white tobacco container containing 34.5 grams of marijuana, which was tested and tendered as exhibit 11.
- Number 40 was a cell phone, which was seized but not exhibited.
- Number 41 was a compass container with one and a half tablets of gold keychain seized from Jeff Gallagher’s car. At this point, these photographs were taken at the R.C.M.P. detachment, and they are photos of the items that were already photographed at the residence where the search warrant was executed, and also in Mr. Gallagher’s car.
- Photo 47, three types of Ziploc bags, located in one of the containers, containing 340 meth tabs.
- Number 48, container located next to the couch and the fireplace containing empty Ziploc bags.
- 49 was the same as 48.

- Number 50 was a container in the living room with 130 meth tabs, under a coffee table with no lid on it, with 13 bundles of ten tabs. I'm skipping through many of these photographs. I went through them just to introduce the exhibit numbers, so that they would be on the record.
- Photograph number 60 was a notebook found in the passenger side of Mr. Taylor's car by Constable Galloway, exhibited as exhibit number 13. All photos were taken by Corporal Ellis on November 18th, 2015. Some were taken in Mr. Gallagher's car, some on Russell Street, Amherst, and some at the R.C.M.P. detachment.

[34] I accept the evidence of Corporal Ellis. She was organized in her presentation of the exhibits as exhibit custodian and as photographer. She gave detailed evidence which I found to be reliable. She was able to quickly locate and reference the many exhibits and link them to photographs for reference with ease. She clearly remembered her role in the events that took place with respect to Mr. Taylor, and testified in a consistent, balanced manner. I had no cause to be concerned about her ability to observe and recount the evidence in this case.

[35] Constable Jason Galloway from Amherst Police Department testified next. On November 18th, he was seconded to the Street Crime Enforcement Unit,

conducting surveillance on Wally, or Walter Taylor on Russell Street. He testified he was driving an unmarked police vehicle with Corporal Ellis when he received word that Mr. Taylor had left his residence, and that another police car was following Mr. Taylor. Constable Galloway testified that he drove to the Tim Horton's in Amherst, where they sat in the parking lot of the old Amherst police department. They saw someone exit the vehicle and enter Mr. Taylor's vehicle for a couple of minutes, and he got back in his own vehicle and drove away. They could not identify Mr. Taylor in the vehicle because it was dark. They had been advised by other SCEU members that Mr. Taylor was driving the car in question.

[36] Constable Galloway testified that he and Corporal Ellis were watching the car. He was advised by other members of the Street Crime Enforcement Unit that the accused, Mr. Taylor, was in the car. Constable Galloway and Corporal Ellis were what he described as "the other backup". The vehicle was stopped on East Pleasant Street in Amherst. While the officer was searching, hypodermic needles were found in the car, underneath the driver's seat of Jeffrey Gallagher. He testified that Constable Landry found them. The car was noted to be very messy. Constable Galloway also noted a child was in the car in a car seat, under three years of age, in his opinion.

[37] Constable Lynds, who had seized Mr. Gallagher's car, showed Constable Galloway a phone with a text message. As a consequence of that message, Constable Galloway testified that he went down to arrest Mr. Taylor for trafficking methamphetamine.

[38] Constable Galloway testified when he arrived at Mr. Taylor's residence he was not at home, so they waited for him and pulled up beside him a few minutes later when Mr. Taylor arrived. He was arrested for trafficking methamphetamine, or a Schedule I drug. Constable Galloway testified that they advised Mr. Taylor that they were going to arrest his wife. He testified they were invited inside to effect the arrest as a courtesy, so not to do it outside. Then both Mr. and Mrs. Taylor were read their *Charter* rights and cautioned from memory. Both parties were advised that they understood their rights. They were taken to the R.C.M.P. detachment, where Constable Galloway took a statement from Mr. Taylor.

[39] A video statement was marked as exhibit 16, and the video and transcript were both admitted into evidence. It was confirmed at this time that it was going to be a blended *voir dire* into the voluntariness of the statement, and after the video was played, defence counsel indicated that the statement was, in fact, voluntary. It was therefore admitted into evidence.

[40] After the statement was taken from Mr. Taylor, Constable Galloway testified that he attended 44 Russell Street in Amherst to assist in the execution of the search warrant. His role was that when he entered the residence, he went to the living room and started searching that area. He testified that Constables Landry, Babineau and Graham were also in the living room with him, Corporal Ellis was back and forth, and Constable Munn was also there.

[41] On cross examination, Constable Galloway agreed that Mr. Taylor was very cooperative, and that he indicated to the officers where the methamphetamine could be found in the living room. Constable Galloway agreed he did not question Mr. Taylor in great detail about Mr. Taylor's use of drugs and his depression medication. Mr. Taylor was not in custody for very long. Constable Galloway testified that Mr. Taylor was arrested at 10:30. The search warrant was executed by 11:30, suggesting not longer than one hour of detention.

[42] I accept Constable Galloway's evidence, which was given in a clear, detailed, balanced fashion. He was quick to agree with defence counsel that Mr. Taylor was fully cooperative with police, and informed them where the drugs might be found. I found that Constable Galloway did not exaggerate his evidence, and there was no suggestion that he was not able to clearly perceive or remember

the events of November 18th, 2015. His evidence was both internally consistent and consistent with the testimony of the other officers regarding the surveillance of Mr. Taylor, the arrest of Mr. Gallagher, and the arrest and search of Mr. Taylor's residence.

[43] Constable Jarrett Munn testified next. On November 18th, 2015, he was working the afternoon/evening shift in plain clothes in Amherst, driving an unmarked police vehicle, and involved in the surveillance of Walter Taylor at 44 Russell Street, Amherst at approximately 8:00 p.m. Constable Munn testified that at 8:20 he observed a male leave apartment A at 44 Russell Street, Amherst, Mr. Taylor's residence. He believed the man to be Walter Taylor, but couldn't say for sure because it was dark out. The male got into a Honda Accord, which he knew to be Mr. Taylor's car. The male left and drove directly to the Tim Horton's parking lot on Church Street in Amherst. He radioed his observations to the other members, who were also conducting surveillance. Once the vehicle was parked behind the Tim Horton's, Constable Munn was not able to make any observations himself, because he could not see the vehicle or Mr. Taylor. He was informed by other members who were conducting surveillance that night, what they were observing, via radio communication.

[44] Constable Munn was advised through the radio communications that the second Honda departed the parking lot after meeting with Mr. Taylor. Constable Munn followed the vehicle, which left Amherst at a quick pace in his estimation, driving over the speed limit. The vehicle turned onto Victoria Street. Constable Munn then engaged his lights and siren and pulled the vehicle over. Constable Serge Landry was also present in the police car with Constable Munn.

[45] Constable Munn testified that the Honda immediately pulled over. Constable Munn approached the driver's side, and Constable Landry the passenger side. Constable Munn determined that a male was driving. Constable Munn presented his R.C.M.P. ID badge to the driver because he was wearing plain clothes. The driver identified himself as Jeffrey Gallagher, and he was pleading with Constable Munn not to arrest him, because he had his five-year-old son in the back seat with him. Constable Munn told Mr. Gallagher to step out of the vehicle and come to the rear of the car, which he did. Once they were out of sight of the child, he was placed under arrest for possession of methamphetamine, handcuffed and searched.

[46] The search incident to arrest did not reveal any methamphetamine or drugs on his person. Mr. Gallagher was then given his *Charter* rights and police caution,

and informed of his right to counsel and placed in the back of the unmarked police car.

[47] During this time frame, Constable Munn testified that he learned from Constable Galloway that Mr. Gallagher was arrestable for possession of methamphetamine for the purpose of trafficking, and as a result, Constable Munn went to the back of the police car and informed Mr. Gallagher that he was now under arrest for possession of methamphetamine for the purpose of trafficking, based on the information he had heard, and he verbally reinformed him of his rights and his caution. A marked police car then arrived on scene to transport Mr. Gallagher to the Amherst R.C.M.P. detachment, a six to seven minute drive from the location where Mr. Gallagher was stopped.

[48] Constable Munn followed the marked police car back to the Amherst detachment, while the other Street Crime Enforcement Unit members remained on scene to search Mr. Gallagher's vehicle for methamphetamine. He arrived at the detachment with Mr. Gallagher while the vehicle was being searched roadside. Constable Munn put the accused in touch with a lawyer. Constable Munn was then informed by other SCEU members that ten methamphetamine tablets were found in a "dime bag" in that vehicle.

[49] Constable Munn took a warned statement from Mr. Gallagher. Once the statement was complete, Constable Munn attended 44 Russell Street at 12:05 a.m. on November 19th, 2015, where the other members of the SCEU had executed the search warrant at Walter Taylor's residence. He assisted very briefly in the search of the kitchen area at the end of the search. He was advised by other police officers that both methamphetamine and marijuana were found and seized, and he observed them as they were shown to him by Corporal Ellis, the exhibit custodian.

[50] I accepted Constable Munn's evidence. I found it to be internally consistent and consistent with the evidence of the other witnesses. His evidence was given in detail in a straightforward way. He was able to recall details, and there was no suggestion that he suffered from a lack of ability to recall or articulate his observations with respect to his investigation.

[51] Constable Serge Landry testified next. He is also a member of the Street Crime Enforcement Unit. Information was provided to the Street Crime Enforcement Unit, according to his testimony, by Constable Lynds, that Walter Taylor was selling methamphetamine. Constable Landry testified that he and Constable Munn were conducting surveillance in Amherst, Nova Scotia on Mr. Taylor, when they observed him on November 18th in a blue vehicle at Tim

Horton's, Church Street, Amherst. They saw another vehicle leave. They followed it and conducted a traffic stop on East Victoria Street in Amherst. Mr. Gallagher was identified as the driver, and his five year old son was in the back seat. Constable Galloway arrested Mr. Gallagher. Constable Landry testified that he assisted in the search of the vehicle. He found the hypodermic needle and a cell phone, and quickly looked at the cell phone and saw its contents, which indicated to him that a purchase had taken place of methamphetamine tablets from Walter Taylor.

[52] Constable Landry testified that Constable Galloway requested that he help him to locate Mr. Taylor, so he stopped his search of Mr. Gallagher's vehicle and turned it over to Constable Lynds and Corporal Ellis and Constable Munn. Constable Landry and Galloway looked at a couple of residences where they thought Mr. Taylor might be, but he was not there. So he testified that they went to his residence at 44 Russell Street in Amherst. They waited there until Mr. Taylor arrived, at which time Constable Galloway exited the police vehicle and placed Mr. Taylor under arrest for trafficking.

[53] Constable Galloway searched the vehicle and Mr. Taylor and seized various items. Mrs. Taylor was inside the home. Constable Galloway advised Mr. Taylor

that he was going to be arresting Mrs. Taylor as well for trafficking in methamphetamine. Constable Landry testified that Mr. Taylor invited the police officers into the home. Mrs. Taylor was arrested, and then they exited the residence and proceeded to the Amherst R.C.M.P. detachment.

[54] Constable Galloway drove them to the detachment. Constable Landry returned to secure 44 Russell Street while Constable Lynds prepared the application for a search warrant, to search the residence. Later in the evening, at approximately 11:30 p.m., Constable Landry testified he read the search warrant, after which time he and other members of the SCEU proceeded to the residence and executed the search warrant. All items were seized by Corporal Ellis, exhibit custodian.

[55] Constable Landry testified that he started searching in the living room. He located numerous items, including a white tobacco bin with numerous tablets inside, and dime bags with a red marijuana maple leaf logo on them, and marijuana. In the master bedroom, Constable Landry found a quantity of cash underneath the mattress. He found the WD40 and Orange Crush cans that were altered with a compartment in them.

[56] Constable Landry testified that he and Constable Galloway went to the vehicle and finished the search, but did not locate anything further, at which time they finished their shift.

[57] I accept Constable Landry's evidence. Again, he was clear and concise, detailed. He took good notes. There was no suggestion he suffered from any memory issues, and was able to recall his involvement with the investigation, and the results of the investigation, with a fairly good attention to detail.

[58] Corporal Tyson Nelson testified next. He is a peace officer of the R.C.M.P. for the past 12 years, and a member of the Cumberland County Street Crime Enforcement Unit. The defence did not challenge Corporal Nelson's qualification as an expert. No *voir dire* was required. Exhibit 17, the CV of Corporal Nelson, was tendered and exhibit 18 is the expert report of Corporal Nelson. Corporal Nelson was then qualified as an expert in the use and possession for the purpose of trafficking methamphetamine and cannabis marijuana. He was also qualified as an expert to give testimony with regard to drug distribution, trafficking methods, and methods used to avoid police detection, pricing, packing, jargon and coded conversations.

[59] The crown asked Corporal Nelson to relate to the court his knowledge of the facts in the case and the basis of his conclusions. Corporal Nelson gave his evidence by separating the two drugs, marijuana and methamphetamine. He testified about the possession and use of scales with respect to marijuana, and the quantity and packaging of the marijuana seized by the Street Crime Enforcement Unit at the Taylor residence. I won't consider this evidence further, as the crown is no longer alleging the marijuana was possessed for the purpose of trafficking.

[60] Corporal Nelson testified, that based on his review of the investigative file, there was cash seized, and that cash is the most common commodity used to trade or pay for drugs. Drug traffickers will sell drugs to get cash to make money. A total of \$1837.50 was seized from Mr. Taylor's residence, from the two locations in the residence, and Mr. Taylor was carrying \$75 cash in his pocket, which was seized when he was arrested.

[61] Corporal Nelson discussed dial-a-dope operations, wherein rather than customers attending the drug dealer's residence, the dealer sells his drugs on foot or by vehicle. He testified that this is a common way to sell drugs, as it allows the dealer to be mobile, taking phone orders and bringing the product to the buyer, making it harder for the police to identify where the money and the main source of

drugs are located. In this way, dealers can travel with less drugs and cash on their person.

[62] Corporal Nelson also briefly referenced the seizure of a cell phone, but in response to an objection by defence counsel, the crown conceded that no cell phone or text messages were introduced into evidence.

[63] The evidence that Corporal Nelson considered was contained on page two of his report. He also discussed in his report the packaging of drugs with resealable dime bags, or small Ziploc bags being the most common packaging method.

[64] Corporal Nelson's opinion was that the number of methamphetamine pills seized from Mr. Taylor's residence, and the way that they were packaged, was not consistent with what someone would have for personal consumption only. He testified that the presence of a pill crusher at their residence indicated to him that someone in Mr. Taylor's residence is a pill user, as the methamphetamine tablets are most often taken orally or by snorting crushed powder.

[65] Corporal Nelson then testified with respect to the seizure of the methamphetamine. He testified again that the basis of his opinion was the methamphetamine tablets that were seized, commonly referred to as ice tabs or speed tabs, are usually white or rectangular in shape, with a chalky feel to them

when you pick them up. They have stamped on the top of them “ice” or “ufc” and sometimes “star”. It is a powdered form of methamphetamine mixed with other products, pressed into a pill or tablet form. Corporal Nelson testified that the user can crush them up in a powder and snort them, take them like a normal pill, or inject it with a syringe.

[66] Corporal Nelson testified that for a personal user, methamphetamine is usually purchased in denominations of one, five or ten pills, with five and ten being the most common amounts. He also estimated the street value of methamphetamine pills at five to ten dollars per pill.

[67] From Corporal Nelson’s review of the file, he noted that there were upwards of 500 to 600 tablets of methamphetamine, which is much more than a personal user would possess, in his opinion, for personal use.

[68] Corporal Nelson also noted the presence of the following factors: clean, unused packaging, or dime bags. The methamphetamine tablets were separated into lots of ten, into at least 30 to 40 bags. That would be a large indicator of trafficking methamphetamine, in his opinion. He also based his opinion on the gross amount of the pills and the amount of cash seized. Corporal Nelson formed

the opinion that the methamphetamine was possessed by Mr. Taylor for the purpose of trafficking.

[69] It is clear from Corporal Nelson's evidence that he is very familiar with the drug trade and trafficking of methamphetamine. His qualifications as an expert were not challenged.

[70] Corporal Nelson was vigorously cross examined on his opinion, and whether the absence of particular factors would affect his opinion that Mr. Taylor's possession was for the purpose of trafficking. For example, defence counsel asked if the accused had an alternate explanation for why the sum of cash was present in the house would change his opinion, to which Corporal Nelson indicated that it would not.

[71] The crown closed their case and Mr. Taylor testified in his defence. He testified that he lives at 33 Brentwood Estates. He is an electrician by trade and he has been working with a carpenter for the past year. He testified that he had been married for 20 years, he has two children, and that he has suffered from depression and anxiety for the past five years. He testified that he self-medicates with methamphetamine and marijuana. He also advised Constable Galloway of the same thing when he gave his statement to police.

[72] Mr. Taylor explained that he went to his doctor when he had a relapse of his condition, and he had to leave his job for almost a year. The doctor gave him medication, but it wasn't doing anything for him, so he turned to using methamphetamine and marijuana to help make it through the day. Mr. Taylor testified that he takes ten methamphetamine tablets per day, more or less, depending on how he is feeling during any particular day. His marijuana use was estimated at one-quarter to one-half ounce, or seven to 14 grams per week.

[73] At the time of the offence, Mr. Taylor testified that he was taking 50 to 70 methamphetamine tablets per week, which totals 280 to 300 pills per month for personal use. Mr. Taylor testified he would go see his dealer and buy one-quarter to one-half pound marijuana at a time, because it is cheaper to buy it that way than by the "quarter" or by the ounce.

[74] With respect to methamphetamine purchases, the accused testified that he went to another dealer to purchase them, and he would buy a bunch during the week, and that eventually his dealer gave him the option to buy more pills for less money, to cut the traffic flow at the dealer's residence. Mr. Taylor testified when he was buying by the "ten bag", it was five dollars per pill, or he could buy 1000 pills for two dollars per pill.

[75] Mr. Taylor then responded to defence questions regarding the facts that were relied upon to form Corporal Nelson's expert opinion that Mr. Taylor possessed methamphetamine for the purpose of trafficking. I note that not all of the items listed in Corporal Nelson's report were exhibited at trial, such as Mr. Taylor's cell phone, and various small quantities of pills and green leafy substances located at the various spots in the Taylor residence, which were not tested or exhibited, but the questions were asked by defence, and Mr. Taylor's answers are relevant, and will form part of the evidence I will consider.

[76] First, Mr. Taylor was asked about the presence of methamphetamine tablets packaged in "dime bags" in Jeffrey Gallagher's car, to which Mr. Taylor replied he was never in Mr. Gallagher's car, and he had no knowledge or information to give about how the methamphetamine got there. He testified that he was not in Mr. Gallagher's car, and that he and Mr. Gallagher were speaking outside their vehicles, and then they stepped into Mr. Taylor's car and talked for a bit. Then Mr. Gallagher exited Mr. Taylor's vehicle and left, and they both went their own separate ways.

[77] Afterward, when Mr. Taylor returned home, he testified the officers pulled up beside him as he was getting ready to back into his driveway. He was then advised he was being arrested, in his words, for possession for the purpose.

[78] Mr. Taylor testified that he and Mr. Gallagher were discussing Mr. Taylor doing work on Mr. Gallagher's house. His exact words were, "I'm pretty sure that's what it was, because he was doing renovations on his house and he wanted to get some electrical done". When he was asked about the 75 dollars cash seized from his right jeans pocket, the accused replied, "Yeah, that was probably just money from a job or something like that at the time, right".

[79] Mr. Taylor was asked by defence counsel about a Motorola cellular phone that was seized from his jacket pocket. He replied it was used for work and personal calls. It is also noted that the accused was cooperative and provided a password to the police when they asked.

[80] Mr. Taylor testified that all the methamphetamine pills seized at his residence were for personal use only. He further testified that all marijuana seized at his house was also strictly for personal use. Mr. Taylor testified that as a user of methamphetamine, he didn't swallow the methamphetamine pills because it gave

him too much of a “rush”. He crushed and snorted them so he could control the effect. He had two pill crushers, one in the living room and one in the bedroom.

[81] At the time Mr. Taylor testified that he travelled on the road to work, and it could be up to two months between jobs.

[82] With respect to the 340 and 130 methamphetamine pills that were divided into bags of ten pills each, Mr. Taylor identified them as coming from his living room. He testified that they were bagged like that so that he knew how much he was using. He was able to portion the pills out for the day, rather than reaching into a large bag and not knowing how much he was consuming. This would prevent him from overusing, and also helped him to keep track of his consumption, because as he said, he often had a stretch of up to two months between jobs and had to make the pills last.

[83] With respect to the two kinds of new and unused dime bags, Mr. Taylor testified that when he bought the batch of “speed”, he bought the bags from his dealer when he got there. He said that his dealer had a bunch of them there anyway, so he gladly sold him some to save him from going out and trying to find some.

[84] Mr. Taylor was questioned about the cash found in the closet of his residence, exhibits eight and 15, specifically the 300 dollars and the \$1152.50 cash found in the basket on the shelf and in the bedroom. Mr. Taylor testified that the 1100 plus dollars that was in the basket inside the cheque box, and the 300 dollars sitting next to it, was in the basket in his wife's closet, and that they had their own closets where they were living at the time. Mr. Taylor was shown and identified four rent receipts, which were marked as exhibit 19. Mr. Taylor testified that his wife was holding onto that money, and that she was waiting to get the rest of the money from the downstairs tenants, referring to at one point Jason and Joan, although the receipts only refer to apartment B, and only the first receipt is dated. Mr. Taylor testified that the tenants were paying 1000 dollars per month, although the receipts indicate 900 dollars per month, and the tenant and his wife both paid half of the rent, so that would be 500 dollars each. Mr. Taylor testified it was an unusual situation how they controlled their finances, his tenants, with each tenant paying a portion of the rent. The rent money was backdated, Mr. Taylor testified, so Mr. Taylor's wife was holding onto the money until one tenant came up with her share of the rent.

[85] The date of the alleged offence was November 18th, 2015. The rent receipts for apartment B were for August, September and October 2015 and were all for

900 dollars, not 1000, with unexplained notations contained on them that do not add up to 900 dollars on any of the receipts. The first receipt, dated September 24th, 2015, was for a total amount of 900 for the stated month of August 2015, but under the written amount of 900 dollars was the notation in numerals: 200 plus 100 plus 100 plus 50, which totals 450 dollars. This is not consistent with the stated rent amount of 1000 dollars that the accused testified to, or the 900 written on the cheque.

[86] Mr. Taylor had ample opportunity to examine exhibit 19. With respect to the second and third receipts, but undated, but were receipts for 900 dollars, with one containing a notation for 50, 200 and 200, which is 450 dollars, and a third with a notation for 300 dollars, in numerals. These receipts were not explained in any detail, and they are confusing and of little assistance. Mr. Taylor's explanation about rent amounts being backdated is also confusing, and the total amounts do not square with the amounts seized.

[87] Exhibit 19 was reintroduced to the accused, who identified an \$1800 rent receipt from his daughter. I assume from the receipt that her name is Nicky Ripley, who Mr. Taylor testified had separated from her partner and was living downstairs with their granddaughter. Mr. Taylor testified that his wife took care of

the rent situation, and that he just basically lived there and was not involved with the rent transactions. As I have said, the amounts do not square with the amount of cash seized, and no details or clarification was given.

[88] With respect to the amount of money found under the mattress, Mr. Taylor indicated that it was to buy Christmas presents for his children, but I note with the \$300 there were also notations too, with a note that said \$500 Honda, \$50 lot rent, \$60 school books, \$1000 oil bill, that accompanied that three 100 dollar bills which were found under the mattress.

[89] With respect to the four hidden compartment cans, Mr. Taylor acknowledged that he had two pop cans, one Orange Crush and two WD40 cans. He bought the Orange Crush can because he likes Orange Crush, and one WD40 can for himself, and the other two cans were gifts, he couldn't recall who from. They were used to hide his drugs from hotel cleaners when he was working on the road and staying in hotels six nights per week. He testified that he knew that hotel cleaners go through people's belongings, which is why he concealed the drugs in the hidden compartment cans.

[90] With respect to the 12 grams of cannabis marijuana located in the headboard of Mr. Taylor's bed, Mr. Taylor said it was for personal use, and used if they were watching TV and had guests staying in the living room.

[91] With respect to the 170 methamphetamine pills seized from the freezer, Mr. Taylor testified that he forgot they were in his freezer. He went on to explain that they were a stronger pill than the square ones that the police had located in his living room. He testified that he knew he was never going to get those round ones again. They were more powerful and went a lot further than the square ice tabs.

[92] Mr. Taylor testified that in his statement that he provided to Constable Galloway, he did not admit to trafficking. The accused also testified that Constable Galloway told him that his wife was going to be charged as well, in his words, "unless I took everything myself, so I told him that it was all mine and that my wife had nothing to do with it. Then he told me that he was going to release my wife, and he didn't release her until about a half hour before I got released." He testified that he felt that he was under a threat from the police officer when he provided his statement. The accused concluded his evidence by admitting that he was guilty of personal possession of marijuana and methamphetamine. He

explained to police about the anxiety and the depression, but he felt that they didn't seem to care, in his words.

[93] With respect to the cross examination of the accused, he confirmed that he had speed, or methamphetamine, and weed for his personal possession. He confirmed that he would buy up to 1000 hits of methamphetamine for personal use, and he would take as many as ten per day for personal use, depending on the situation. When the search took place in 2015, Mr. Taylor confirmed that he put the drugs in the bags when he bought them, and divvied them up into bags of ten for his daily dosage. The accused agreed it was his habit and procedure that when a large quantity of pills were bought, he broke them down into quantities of ten into little baggies.

[94] Crown pointed out that in 2015 when he was arrested, he was under surveillance by Street Crime officers, and they testified they saw him in his car "have a rendezvous" in the crown's words, with Jeffrey Gallagher in the Tim Horton's parking lot. The accused acknowledged meeting Mr. Gallagher, and he agreed that Mr. Gallagher got into Mr. Taylor's car, and in Mr. Taylor's words, "he was in there long enough to write things in his notebook". He wrote down what kind of breakers he would need. Mr. Taylor testified that he had a note about

Corey Janes. One note he was very vague on, saying it was something about he was going to show me a You Tube site, something about a jacket.

[95] The crown suggested that Mr. Gallagher was going to buy ten hits of methamphetamine from Mr. Taylor and resell them to Corey Janes. Mr. Taylor denied any knowledge of drug transactions, and he said that the conversation was strictly about doing electrical work. The crown directed the accused to look at photographs 60 to 62 in exhibit four, and Mr. Taylor testified that photo 61 was Corey Janes' Hotmail address, and photo 62 was identified as a 1-800 phone number, but he didn't know what it was. Photo 60 was noteworthy, because Mr. Taylor gave a very detailed explanation of the contents of page 60 of the notebook. He testified that he did electrical work for Corey Janes in his father's building at the time. He called it the Windjammer building. The lower picture on the right hand corner, he pointed out a square D, which square D was written. The left side of the page says "Kent" and the right side says "Eddy's", and when you go down, he discussed what the notations meant, 15sp meaning 15 single pole, 15dp meaning 15 double pole, 20sp meaning 20 single pole, et cetera. He described that they were all breakers, and the breakdown of their prices, sp being single pole, dp being double pole. The accused testified that if you looked beside them, there are

numbers, which are prices for the breakers, and it's a breaker cost breakdown so he could quote the price on the job.

[96] He said that he keeps it in the van so that he can quote the price to the customer. The four notebooks were admitted into evidence as exhibit number 13.

[97] Further on in photo 60 and 61, he discussed the term arc fault, arc fault breaker for a bedroom, and he said that they are now required for any circuit that goes into a house, and it shows the price of that breaker. He said normally a breaker costs ten dollars per pole. The arc fault breakers cost 70 to 100 dollars per pole, depending on the breaker. Mr. Taylor testified that panel 2428 means 2428 circuit panel, so it can have a single or twin breakers.

[98] Mr. Taylor continued his explanations of the notations he made regarding Corey Janes. He testified that the notation "five and half hours" meant it was five and a half hours labour time. He specifically recalled running a wire through Mr. Janes' father's Windjammer building, and he testified that he ran one 2-gang box and a GFI box into the building. Mr. Taylor discussed how he remembered doing the job, because he had to chase the wires over the steel beams in the building, and he had to use Corey's father's forklift to lift pallets and get the wires to run across the building.

[99] I accept his evidence with respect to the contents of the notebooks, as they related to an electrical quote on Corey Janes' father's building.

[100] As I previously stated, I can accept some, all or none of a witness' evidence, and I must now give special consideration to the evidence of the accused, per *R. v. W.(D.)*, (supra). I do not accept all of the evidence of Mr. Taylor, but I accept some of it. I accept that he was using methamphetamine and marijuana to self medicate, and that he would have used some quantity of the methamphetamine for personal use. That is supported by his evidence at trial and in his statement to Constable Galloway, and by the presence of the two pill crushers seized at his residence. I accept the notations in his notebook relate to a prospective job for Corey Janes' father at the Windjammer, and that he had notes quoting the prices of the different electrical breakers that he kept in his van to quote customers. I find that it was not a score sheet, as alleged by the crown, for tallying drug transactions. It was a work notebook.

[101] I accept that he was buying methamphetamine and marijuana in bulk amounts which, as he testified, would both save him money on the cost of the drugs and reduce the traffic to his dealer's residence.

[102] Having accepted this evidence, there are critical pieces of Mr. Taylor's evidence that I simply do not accept. First, I do not accept that he was at the Tim Horton's parking lot at 8:30 p.m. at night and had a three to five minute short duration meet with Jeffrey Gallagher about a prospective electrical job. Although I accepted that the notebook was not a score sheet, that was because Mr. Taylor gave very clear details and fully explained the notations as related to a job that he was discussing with Corey Janes about electrical work to his father's Windjammer building, not a potential job for Jeffrey Gallagher. He was very vague and provided no details about the discussion that he had with Mr. Gallagher, and no notes were written in his notebook as pertaining to this conversation. As I noted, during cross examination, Mr. Taylor testified that he had met with Mr. Gallagher in the car, and in his words, he met him long enough to write things in his notebook, and that he wrote down what kind of breakers and stuff he would need, yet the only notations pertained to the job for Mr. Janes and the pre-written notations that he said he showed clients, nothing specific to Mr. Gallagher.

[103] The second piece of evidence that I do not accept is Mr. Taylor's explanation of why he broke the bulk amounts of methamphetamine down into bags of ten. Mr. Taylor testified that it was to control the amount that he used, but there are other ways to do this, and quite frankly his explanation is not believable.

He could have portioned out some of the drug on a daily or even a weekly basis. In his testimony, it is clear that Mr. Taylor is not an unsophisticated buyer of drugs or user of drugs. He discussed in detail the reasons for buying bulk amounts, not only to get a better price for the drug, but to cut down on the traffic to his dealer's residence. He testified that he previously bought his methamphetamine tablets, in his words, "by the ten bag for five dollars per pill". I find that clearly Mr. Taylor was aware that this was a typical quantity of tablets packaged for purchase at street level, and it defies belief that he would pre-package over 600 methamphetamine tablets into bags of ten for his personal use, thereby making himself look like a drug dealer if he was caught.

[104] The third critical piece of evidence I have considered is Mr. Taylor's denial of selling methamphetamine, during cross examination. In his testimony in court at trial, he denied that he told the officer that he sold methamphetamine during his statement. In Mr. Taylor's statement to Constable Galloway, which is contained in the transcript of the video statement at page 11, the following exchange took place, which I will reproduce here:

Q. But every time I...I try to understand it because every time I get someone for selling speed I can never understand why they take the risk they do for such a small profit.

A. Stupidity.

Q. So I assume you're not making any money off it...or you're not getting rich off it anyway.

A. Well, I'm not driving a brand new Cadillac as you can tell.

Q. Yeah. What do you get out of it? Gas money.

A. That and the use because sometimes when I'm...we'll sit in...I'll sit at home and I'll do a little bit myself right. It's just...

Q. So basically you're using it...you're selling it to fund your own usage.

A. In a sense, yeah. I don't know.

Q. That makes sense to me.

A. I just don't know.

[105] This entire exchange about Mr. Taylor selling methamphetamine or speed is about him selling methamphetamine or speed and making money off it. He clearly understood Constable Galloway's questions and acknowledged that selling speed is not making him rich. The officer is not speaking of possessing it. He's asking about Mr. Taylor selling speed, and he answers that not only is he not making much money off it, and he's not driving a brand new Cadillac, he also agrees that in a sense he's selling speed to fund his own usage, although he then qualified it with, "I don't know". I find that Mr. Taylor admitted selling methamphetamine in his statement, and he acknowledged that he was not making much money off it.

This was not an unequivocal admission. So he was not making much money off it, and he was selling methamphetamine to fund his own personal use. I find this admission is not negated by simply adding, “I don’t know” at the end of the statement. This admission goes not only to proof of trafficking, but also given his denial and his testimony at trial for selling methamphetamine, this is a major inconsistency, which goes to the very heart of the credibility of his evidence.

[106] Further, Mr. Taylor stated to Constable Galloway that, “I’ll sit at home and I’ll do a little bit myself”, which is also inconsistent with the heavy usage of up to ten pills per day that he described in his testimony at trial.

[107] Mr. Taylor also testified at trial, in his evidence in chief, that Constable Galloway told him that his wife was going to be charged as well, in his words, “Unless I took everything myself, so I told him that it was all mine and that my wife had nothing to do with it”. I listened to the statement that he gave to Constable Galloway several times, and I reviewed the transcript of the video statement, and I did not find evidence of this. I would add that this statement was admitted with the consent of defence, who stipulated, after viewing the statement in court and comparing the written transcript, that it was a voluntary statement and admissible. Mr. Taylor’s testimony on direct examination that he was told by

Constable Galloway that unless he took everything himself, his wife would be charged, is simply not supported by the video or the transcript. At page 12 of the transcript, the following exchange takes place, starting at line 20. The exchange starts with Constable Jason Galloway asking Mr. Taylor:

Q. Okay. What about your wife? What does she have to do with any of this?

A. Nothing.

Q. Absolutely nothing?

A. I'm not lying to you, man. Nothing.

Q. Okay. So I'm going to talk to her and I hope she tells me the same story. If she does I'll release her right away.

A. Like, I'm not lying to you, man. The wife has nothing the fuck to do with this, right.

Q. Does she use?

A. A little bit. Not a lot. Not like I do. But like I said, she has absolutely nothing to fucking do with this.

Q. Okay.

A. Like I'm not going to fucking jump up and say everything, but I'm just going say like, honestly, no.

Q. Oh, so you're an easy guy to get along with. You're taking the fall for it. That's good enough for me. This isn't a promise or a threat. If she says that she had nothing to do with it I'm going to...within five minutes she's going to be out the door free as a bird.

Mr. Taylor indicated to Constable Galloway in this exchange that he was not going to tell him everything about his wife, but still maintained that she had nothing to do with it. Constable Galloway was clear that if she said the same thing that she would be released. I find that Mr. Taylor's testimony at trial that Constable Galloway told him to take the fall for his wife is simply not true, or that he was under duress, and I find that affects his credibility.

[108] My final comment on this point is that even if Mr. Taylor was simply taking the fall for his wife, as he testified at trial, it makes no sense that he would admit to selling methamphetamine, when he could have simply admitted to simply possessing it. I also note that this conversation about his wife's involvement in the statement took place after he admitted to selling the methamphetamine to fund his personal use. So I reject his evidence on this point. I simply don't believe it.

[109] In the evidence in chief, Mr. Taylor was asked about the 170 methamphetamine tablets seized from his freezer. Mr. Taylor immediately answered that he forgot they were in his freezer, and then discussed the difference between those round tabs and the square shaped ones seized from the living room. I find that a dominant theme in Mr. Taylor's testimony was his concern over controlling his usage of the methamphetamine, and insuring that he did not

overuse, so that he would have sufficient quantity to get him through until his next job arose, when he would be able to buy more. I find it defies belief that he would forget about 170 methamphetamine tablets that he had already divvied up into bags of ten, that were stronger than the other pills that he had in his residence. It just simply defies belief.

[110] With respect to the position of the parties, the crown submits that it is proven beyond a reasonable doubt that the accused is guilty of trafficking methamphetamine, was in possession of a Schedule I drug, methamphetamine, for the purpose of trafficking, and was in possession of marijuana.

[111] The defence submits that the crown has not proven its case, and that after assessing the totality of the evidence through the lens of *R. v. W.(D.)*, (supra), I should find the accused guilty of possession of marijuana, and not guilty of possession of methamphetamine for the purpose of trafficking, and not guilty of trafficking methamphetamine.

[112] In the analysis, as I have said, the crown bears the burden of proving these charges beyond a reasonable doubt. Specifically, with respect to count one, trafficking in methamphetamine, contrary to section 5(1) of the *CDSA*, the crown has to prove the substance named in the information is a controlled substance,

included in Schedule I of the *CDSA*; number two, that Mr. Taylor trafficked that substance. Trafficking is defined in section 2 of the *CDSA* as:

(a) to sell, administer, give, transfer, transport, send or deliver the substance.

To sell includes having the substance in your possession for sale and distribution.

To transport means to carry a substance in order to distribute it to others.

[113] With respect to count two, possession of methamphetamine, a Schedule I substance for the purpose of trafficking, contrary to section 5(2) of the *CDSA*, the crown has to prove: 1) the substance named in the information is a controlled substance, included in Schedule I of the *CDSA*; 2) that Mr. Taylor knowingly had possession of the controlled substance at the time set out in the information; 3) Mr. Taylor's purpose of possessing the substance, methamphetamine, was to traffic in that substance.

[114] With respect to count three, dealing with the possession of marijuana for the purpose of trafficking, the crown conceded, at the close of the case, after argument, that there was insufficient evidence to prove the offence of possession of marijuana, a substance included in Schedule II of the *CDSA*, for the purpose of trafficking, contrary to section 5(2), and invited a conviction for possession of

marijuana, indictable possession, contrary to section 4(1) of the *CDSA*. Mr. Taylor also conceded in his evidence that he was in possession of the marijuana for personal use.

[115] Section 4(3) of the *Criminal Code* provides that:

(a) a person has anything in possession when he has it on his personal possession or knowingly

(ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself...

I find that Mr. Taylor was in possession of marijuana, and I do find him guilty of the lesser, included offence of possession of marijuana.

[116] With respect to s. 5(2) of the *CDSA*: 1) Is the substance named in the information in counts one and two a controlled substance included in Schedule I of the *CDSA*? I am satisfied, from the evidence as a whole, and particularly the evidence of Corporal Ellis, of the continuity of all exhibits. The substances seized were sent to the laboratory for testing and the other exhibits forwarded to Corporal Ellis, the exhibit custodian. I find that it has been proven beyond a reasonable doubt that none of the exhibits were contaminated or altered while they were in police custody. Based on the certificates of analysis and the evidence of Corporal Ellis, I am satisfied beyond a reasonable doubt that the substances found in Mr.

Gallagher's car and Mr. Taylor's residence were the controlled substances described in those certificates; namely methamphetamine and also caffeine, and in the quantities as described by Corporal Ellis. In particular, ten tablets of methamphetamine seized from Mr. Gallagher's motor vehicle, exhibit five, and the following which was seized from Mr. Taylor's residence: 340 tablets located and seized from the living room floor in the plastic tobacco container, divided into 34 small Ziploc bags, containing ten pills each, tendered as exhibit six, depicted in photos 19, 20, 45, 46 and 47, contained methamphetamine. 130 methamphetamine tablets located and seized from the living room floor near exhibit six in an open tobacco container. The bulk amount was divided into 13 smaller Ziploc bags of ten pills each, shown in photographs 21 and 50, and exhibit four. They contained methamphetamine and caffeine. 170 tablets located and seized from the kitchen freezer door in a white plastic frosting container with a red lid. Total amount was divided into 17 small Ziploc or dime bags of ten pills each, depicted in photos 38 and 56. They contained methamphetamine. The total number of methamphetamine tablets that were seized from Mr. Taylor's residence was 640.

[117] Did Mr. Taylor knowingly have possession? This is number two. Mr. Taylor testified that all the methamphetamine tablets seized from his residence were for his personal use. He testified he suffered from anxiety and depression and

he was using the methamphetamine tablets, along with the marijuana, to self medicate, because he did not find the prescribed medications to be effective.

[118] Mr. Taylor described how he acquired the methamphetamine tablets and divided them up, and essentially had knowledge and exerted control over them, and admitted to their possession. I therefore find that he was in possession of the methamphetamine and the marijuana. Mr. Taylor also claimed the marijuana in his residence was for his personal use, to alleviate the effects of his anxiety and depression. Similarly, he discussed purchasing the marijuana from up to four different dealers, and described how he would weigh out the bulk amounts, and that he would purchase and divide them into smaller amounts of quarters, so that he could control his dosage and not over-smoke. I find that he had possession of the marijuana, and he acknowledged that he did. Accordingly, I find he was in possession of marijuana. He will be found guilty of the lesser, included offence of possession of a Schedule II substance, particularly marijuana, contrary to section 4(1) of the *Controlled Drugs and Substances Act*.

[119] I will now address count one, trafficking methamphetamine, specifically pertaining to the alleged sale to Mr. Gallagher, contrary to section 5(1) of the *CDSA*. This was based on the evidence that the Street Crime Enforcement Unit

obtained that Mr. Taylor was engaged in trafficking from his vehicle. They conducted surveillance on that particular day. They followed him from his residence in his Honda Civic, saw that he met Mr. Gallagher for a few minutes in his car at Tim Horton's, in a short duration meet at Tim Horton's in downtown Amherst. This meeting was confirmed by the accused in his evidence, as was his presence there. The crown relied on the fact that very shortly after the meeting, Mr. Gallagher was stopped by the police very soon after leaving the scene of this meeting. Mr. Gallagher was arrested, and the police found a dime bag, or a Ziploc baggie, with a red marijuana maple leaf, containing ten methamphetamine tablets. Based on that information, the police prepared and executed a search warrant soon after to search the residence of Mr. Taylor, and executed that search warrant and seized in excess of 600 methamphetamine tablets. There were similarities in the appearance and shape of the methamphetamine tablets seized from Mr. Gallagher's car and Mr. Taylor's residence, the fact that in both locations, the methamphetamine seized were divided into small Ziploc bags, or dime bags, in quantities of ten. The type of packaging was small, clear Ziploc bags with the red marijuana maple leaf was distinctive and indicates a common source. All of these facts, considered in their totality, lead me to conclude that the accused probably trafficked drugs to Jeffrey Gallagher from his car on November 18th, 2015.

[120] However, probably or likely guilty is not the test. I must be satisfied beyond a reasonable doubt. As the defence has pointed out, there is no direct evidence linking the accused with the drugs found in Mr. Gallagher's car. There was no hand-off or exchange witnessed by the surveilling police officers. Mr. Taylor was not observed to enter Mr. Gallagher's car, where the drugs were found. There is no fingerprint or DNA evidence linking Mr. Taylor to the methamphetamine in Mr. Gallagher's car.

[121] The crown's case for trafficking is a circumstantial one. The Supreme Court of Canada recently restated the approach that triers of fact must take when dealing with circumstantial evidence, and that is *R. v. Villaroman*, [2016] 1 SCR 1000. The court reiterated that an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits. The court stated, at paragraphs 37 to 38:

When assessing circumstantial evidence, the trier of fact should consider "other plausible theories" and "other reasonable possibilities" which are inconsistent with guilt: R. v. Comba, 1938 CanLII 14 (ONCA), [1938] O.R. 200 (C.A.), at pp. 205 and 211, per Middleton J.A., aff'd 1938 CanLII 7 (SCC), [1938 S.C.R. 396; R. v. Baigent, 2013 BCCA 28 (CanLII), 335 B.C.A.C. 11, at para. 20; R. v. Mitchell, [2008] QCA 394 (AustLII), at para. 35. I agree with the appellant that the crown thus may need to negative these reasonable possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful,

which might be consistent with the innocence of the accused”: R. v. Bagshaw, 1971 CanLII 13 (SCC), [1972] S.C.R. 2, at p. 8. “Other plausible theories” or “other reasonable possibilities” must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

Of course, the line between a “plausible theory” and “speculation” is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.

[122] In my view, the alternative inference advanced by the defence would mean that the evidence is consistent with the accused having had a prearranged meeting in a parking lot behind Tim Horton’s for three to five minutes in his vehicle with Mr. Gallagher to discuss an electrical job with him at 8:20 p.m. under cover of darkness, and the fact that Mr. Gallagher was pulled over soon after by police and found in possession of ten pills, the same type with the same logo containing the same type of pill, square tabs with the ice stamped on them, as was found in the residence of the accused when it was searched soon after, was simply a coincidence, and is not plausible when I consider the totality of the evidence. This is a circumstantial case, and I find that the only reasonable inference to be drawn from the totality of the circumstances is that Mr. Taylor sold ten methamphetamine tablets to Jeffrey Gallagher, and he trafficked in that substance.

[123] Given the constellation of circumstances just referred to, I have come to the conclusion that Mr. Taylor trafficked in a Schedule I controlled substance, methamphetamine. Accordingly, when I consider the evidence of the accused in light of *R. v. W.(D.)*, (supra), I do not accept Mr. Taylor's evidence, and I am not left in a state of reasonable doubt by it. When I consider the totality of the evidence, I am not left in a state of reasonable doubt, and I find Mr. Taylor guilty of trafficking methamphetamine, as per count one on the information.

[124] With respect to count two, possession for the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act*. Again, defence counsel had relied heavily in closing arguments on the absence of certain things, such as weapons, a large amount of traffic at the residence, or very large amounts of cash. The crown referred to the *R. v. Fifield*, 1978 CanLII 812, a decision from the Nova Scotia Court of Appeal which discusses the different levels of trafficking that may be present, from the petty retailer to the large scale, wholesale commercial distributor. The crown is not alleging that the accused is a wholesale trafficker. The evidence of trafficking alleged by the crown is that of a petty trafficker dealing in relatively small quantities, and that the accused would not need weapons to protect himself, but it is nevertheless trafficking.

[125] No one piece of evidence itself is determinative of a trafficking issue. Simply having a large amount of a drug at hand is not sufficient evidence in itself to ground a conviction for trafficking. Again, as I have said, the totality of the evidence must be considered.

[126] The crown relied on the circumstances surrounding the surveillance and arrest of Mr. Gallagher that I detailed earlier in this decision, along with the expert opinion of Corporal Nelson. What are the indicia that Corporal Nelson relied on to form his opinion that the accused was trafficking methamphetamine? That he was in possession of the methamphetamine on his property. The accused acknowledged that possession. Then Corporal Nelson looked at the quantity of what drugs Mr. Taylor had - hundreds of hits of methamphetamine. The accused himself discussed it in terms of buying it in lots of 1000 hits. The expert, Corporal Nelson, testified that this quantity would be far in excess of the quantity a person would possess for personal use. Further, the drug was broken down into smaller lots of ten, which the expert, and the accused also testified was the usual amount that the drug is normally purchased in. The accused testified that he purchased it himself in that amount. There were also new, unused dime bags seized, or Ziploc bags, at the residence.

[127] Score sheets were something that the expert relied on, and I found the notebooks in this case were not score sheets. The quantity of cash was the other indicia relied upon by the expert in his report. The defendant has given an alternative explanation, and I find this explanation to be confusing. Given my earlier comments about the inconsistencies in his evidence, my confidence in his credibility is sufficiently undermined that I am unable to accept his explanation about the cash that was seized from his residence.

[128] Corporal Nelson's opinion was that someone who had the quantity of drugs packaged in that way, along with the cash and other indicia, would be indicative of someone trafficking in methamphetamine. This is the position of the crown with respect to the second count of possession for the purpose of trafficking, pursuant to section 5(2) of the *CDSA*. I accepted the evidence of Corporal Nelson and his opinion that Mr. Taylor possessed methamphetamine for the purpose of trafficking.

[129] Defence had raised the fact that the "ten bags", or bags in denominations of ten, were all that were present, and buyers might want other denominations, such as one, two or twenty or five, which is further evidence that the pills were so portioned for Mr. Taylor's personal use only, and that he was not packaging them in preparation for resale. Defence also raised the point that methamphetamine was

the only drug found, which is actually not correct, as marijuana was also seized. Defence also claimed that a drug trafficker would be expected to have a wide variety of drugs for sale, such as cocaine, crystal meth or ecstasy, but again, the crown indicated they were alleging Mr. Taylor to be a petty retailer, and not a large scale or a wholesale drug trafficker. Each case is going to turn on its own facts.

[130] I have already found that the drug was methamphetamine, and that the accused admitted to possessing it. The final issue is the possession for the purpose of trafficking. It is possible, if considered in isolation, that the quantity of methamphetamine in excess of 600 tabs could have been held for personal use. Evidence supporting this personal use of the methamphetamine would be the two grinders located during the search of the living room and the bedroom.

[131] This court's job is to consider the evidence in totality, not in isolation or piecemeal. It is possible that the accused was a personal user of methamphetamine. Indeed, he admitted to personal use both in his statement to Constable Galloway and in his sworn testimony. However, given my difficulties with Mr. Taylor's credibility, I am unable to accept his evidence about his consumption rates and why he divided the bulk amount of methamphetamine into baggies of ten tablets. Based on the large quantity of methamphetamine in his

possession, and the way in which the pills were divided into multiple groupings of ten, and the use of the dime bags or Ziploc bags, together with the cash, and the opinion of Corporal Nelson, I am satisfied beyond a reasonable doubt that even if the accused used some of the stash of methamphetamine for personal use, the majority of it was possession for the purpose of trafficking.

[132] The most important and perhaps obvious piece of evidence I must consider when making a determination of whether the possession of methamphetamine was for the purpose of trafficking, is the admission of the accused in his statement that he was selling the drug to fund his own use. This admission goes directly to proof of the offence before this court. But even without this admission, even if I were wrong, after having considered all the evidence before me, and the totality of the circumstances, I have come to the conclusion that Mr. Taylor had knowledge and possession of the methamphetamine seized in his residence, by his own admission, and that that possession was for the purpose of trafficking. Taken all together, that is, my disbelieving Mr. Taylor about why he divided the tablets into bags of ten, and the inconsistencies in his evidence at trial, in his statement to police, my confidence in Mr. Taylor's credibility is sufficiently undermined that I am unable to accept his evidence, and I am not left with a reasonable doubt, for the purpose of the first two parts of the *W.(D.)*, (*supra*) analysis, that his possession of

methamphetamine was not for the purpose of trafficking. Accordingly, I find the accused guilty of possession of methamphetamine for the purpose of trafficking.

Rosalind Michie, JPC.