

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Cope et al.*, 2024 NSPC 35

Date: 20240607

Docket: 8496822 – 8496823, 8521871 – 8521876
8521813 – 8521818 and 8521957 - 8521968

Registry: Truro

Between:

His Majesty the King

v.

Matthew Alexander Cope, Darren Charles Marshall,
Alisha Dawn Brooks and Jason Robert Brooks

TRIAL DECISION

Judge: Associate Chief Judge Ronda van der Hoek

Trial: February 3, June 9, July 6, July 26, October 10, October 16,
December 4, December 15, 2023, and May 10, 2024, at Truro,
Nova Scotia

Oral Decision: June 7, 2024

Charges: Sections 9(2), 10(2), 9(1)(a)(iv) and 10(2) of the *Cannabis Act*,
SC 2018, s. 16 and Sections 218.1(1) x 2, 214 x 2 of the *Excise
Act*, 2001 (S.C. 2002, c. 22)

Counsel: Peter Ledermann for Cope, Brooks, and Brooks
Jack Lloyd for Marshall
Michael Taylor, for the Federal Crown

By the Court:

Introduction

[1] In response to complaints involving a proliferation of marijuana shacks on Millbrook First Nation, located in the vicinity of places where youth gather, police engaged in surveillance and investigation of The Flower Barn (TFB), High Times Station (HTS), and Jason's Convenience Store. On June 2, 2021, they executed warrants to search and seize at the three locations.

[2] On December 23, 2020, a warrant was also executed at the HTS located in Cole Harbour.

[3] Mr. Darren Marshall is associated with TFB, Mr. Jason Robert Brooks and Ms. Alicia Dawn Brooks with Jason's Convenience Store, and Mr. Matthew Alexander Cope with HTS in Cole Harbour and Millbrook.

[4] At all search locations police located and seized suspected cannabis product offered for sale; none of the seized product bore proof that duty had been paid (excise stamps) pursuant to the *Excise Act*. Samples tested at the Canada Border Services Agency (CBSA) laboratory, and in the case of HTS (Cole Harbour) the Health Canada laboratory, confirmed the products were cannabis.

[5] The defendants are charged with possession of cannabis for the purpose of distributing and of selling, contrary to ss. 9(1)(a)(iv) and 10(2) of the *Cannabis Act*,

SC 2018, s. 16. The Crown did not seek a conviction for Mr. Cope on count two-sale (s. 10) related HTS, Millbrook.

[6] The parties are also charged with the following offences contrary to the *Excise Act*, 2001, SC 2002, c. 22:

Section 158.11(1)- dispose of, sell, or offer for sale cannabis that was not packaged and stamped to indicate duty had been paid.

Section 158.11(2) - same but with respect to provincially required duties.

Section 158.1(a)(i)- purchase or receive for sale a cannabis product from a producer that the person knows, or ought to have known, is not a cannabis licensee.

Section 158.1(b)- purchase or receive for sale a cannabis product that is required under the Act to be packaged and stamped unless it is packaged and stamped in accordance with the Act.

[7] The parties consented to joinder including the Cole Harbour matter, and all proceeded to trial in Truro Provincial Court.

[8] Mr. Lederman, on behalf of the Brooks' filed an *Agreed Statement of Facts* admitting the essential elements of most of the offences, and they await joining the Constitutional Question stage of the proceedings.

[9] On behalf of Mr. Cope, Mr. Lederman conceded identity, and agreed to the admission of photographs taken by police (interiors, exteriors and the contents of both HTS locations), the Nova Scotia Registry of Joint Stock Companies (NSRJSC) report for HTS indicating the recognized agent is Mr. Cope, and the Certificates of

Analysis attached to items seized at the HTS locations and confirmed as cannabis, and not bearing *Excise Act* duty stickers.

[10] Mr. Lloyd, on behalf of Darren Marshall, argues the Crown has failed to prove the elements of the offences, or they are subject to the *Kineapple* principle. I will consider those arguments after setting out the law and my findings of facts, but first the law.

The law:

[11] The purpose of the *Cannabis Act* is set out at s. 7 of the *Act*.

7 The purpose of this Act is to protect public health and public safety and, in particular, to

- (a) protect the health of young persons by restricting their access to cannabis;
- (b) protect young persons and others from inducements to use cannabis;
- (c) provide for the licit production of cannabis to reduce illicit activities in relation to cannabis;
- (d) deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures;
- (e) reduce the burden on the criminal justice system in relation to cannabis;
- (f) provide access to a quality-controlled supply of cannabis; and
- (g) enhance public awareness of the health risks associated with cannabis use.

[12] The *Act* permits distribution and sale of cannabis but only by authorized persons, and in this province, sales are authorized only at Nova Scotia Liquor Commission locations.

[13] Section 10 of the *Cannabis Act* addresses sales and reads as follows:

10 (1) Unless authorized under this Act, it is prohibited to sell cannabis, or any substance represented or held out to be cannabis ...

(2) Unless authorized under this Act, it is prohibited to possess cannabis for the purpose of selling it contrary to any of paragraphs (1)(a) to (c).

[14] Pursuant to s. 10(5) of the *Act*, every person that contravenes s. 10(2) is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

[15] Section 9 of the *Act* applies to distribution and reads as follows:

9(1) Unless authorized under this Act, it is prohibited

(a) for an individual who is 18 years of age or older

...

(iv) to distribute cannabis that they know is illicit cannabis

...

[16] As such, to obtain convictions under the *Act*, I conclude the Crown must prove respectively that the defendants, who are over 18 years, distributed cannabis that they knew was illicit (s. 9) and, in the case of s. 10, were not authorized to possess it, yet offered it for sale.

[17] The *Act* also provides helpful definitions.

Distribute - “includes administering, giving, transferring, transporting, sending, delivering, providing or otherwise making available in any manner, whether directly or indirectly, and offering to distribute”.

Sell - “includes offer for sale, expose for sale and have in possession for sale”.

Illicit cannabis “means cannabis that is or was sold, produced or distributed by a person prohibited from doing so under this Act or any provincial Act or that was imported by a person prohibited from doing so under this Act”.

[18] The distinction between sell and distribute appears to be that distribute does not require an offer to sell. As such, counsel for Mr. Marshall argues distribute is

subject to *Kineapple* if the Court finds the cannabis was offered for sale. Of course, it could also be the case that failing to prove an offer to sell could still attract conviction for distribution - *making available in any manner*.

The *Excise Act* charges:

[19] All cannabis product offered for sale must bear stamps attesting to payment of all applicable duties. The *Act* provides helpful context for the regulatory regime:

Notice — absence of stamping

158.14 (1) The absence on a cannabis product of stamping that indicates that cannabis duty has been paid is notice to all persons that cannabis duty has not been paid on the cannabis product.

Notice — absence of stamping

(2) The absence on a cannabis product of stamping that indicates that *additional* cannabis duty *in respect of a specified province* has been paid is notice to all persons that additional cannabis duty in respect of the specified province has not been paid on the cannabis product. 2018, c. 12, s. 73

[20] While there is a Canada wide ‘dutiabale amounts’ payable on cannabis (s. 2), there are also specified provincial duties addressed in the *Excise Duties on Cannabis Regulations*, SOR/2019-78, and for Nova Scotia that is contained at s. 3(1):

s. 3(1) For the purposes of subparagraph (i) of the description of C in paragraph

(a) of the definition dutiable amount in section 2 of the Act, the prescribed percentage in respect of a specified province is

...

(c) in the case of Nova Scotia, the percentage set out in paragraph 2(a) of Schedule 3;

[21] Schedule 3 reads as follows:

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

The evidence:

The Flower Barn (Darren Marshall):

[22] Cst. Burcham testified that he participated in enforcement actions related to cannabis dispensaries operating on Millbrook First Nation after April 2021 when the RCMP undertook a coordinated response to address the proliferation of dispensaries. The plan involved shutting down the operations in such a manner as to preclude reopening within a day as had occurred after past operations. As such, officers planned to remove, where possible, the physical buildings.

[23] Cst. Burcham recounted the pre-search surveillance conducted at the TFB, believed to be operated by Mr. Darren Marshall, located near a basketball court and community center where youth congregated. Police would target the location due to the resultant risks associated with operating in such locations.

[24] Cst. Burcham says TFB had been in the Millbrook location for some time operating out of what he referred to as a 'baby barn'. He watched as the operation evolved from an open-door service to a takeaway window format during the covid pandemic. In the case of the latter iteration, the officer testified that he saw queues

of people outside TFB for short duration visits, and during covid, cars queueing in a similar manner. Based on his observations, he concluded TFB was operating as a cannabis dispensary. (The forgoing evidence was the same for both HTS, Millbrook, and Jason's Convenience Store.)

[25] Cst. Brown testified that he drafted the search warrants and assistance warrants for TFB, as well as the other Millbrook search locations. On June 2, 2021, at 2:10 pm the three dispensaries, located at Millbrook, were simultaneously searched: TFB, HTS, and Jason's Convenience Store.

[26] At TFB, Cst. Burcham was tasked to oversee the entry and effect a soft shut down of the operation; he was not tasked to seize cannabis products nor to catalogue them. Once on site, he and other officers immediately located a GMC Denali, registered to Darren Marshall.

[27] Cst. Solarino testified that he entered TFB where he found Darren Marshall standing behind the glass display case. The officer used a large book of photographs, entered as an exhibit, to identify the location where Mr. Marshall stood directing police to leave the premises, in what was described as a "non-confrontational manner". Along with Cst. McDonald, he arrested Mr. Marshall. The officer provided an in-dock identification of Mr. Marshall.

[28] Cst. McDonald testified that he was the *Site Commander* at TFB and, along with Cst. Solarino, interacted with and arrested Mr. Marshall. He also identified Mr. Marshall in the courtroom.

[29] Cst. Burcham testified that he entered TFB after Mr. Marshall's arrest and provided a detailed description of the interior that accorded with the numerous photographs taken by Cst. Solarino. TFB was described as an extended version of a 'baby barn', with a sign on the front indicating its name. The interior was a large space containing display cabinets filled with cannabis products. Cst. Burcham concluded customers attending therein were meant to stand in the middle of the room while an employee stood behind the glass display cabinets to locate product. He also surmised customers attending at the window could be served by a staff member who could retrieve orders from the shelves.

[30] Cst. Burcham says TFB was "very store-like, with glass display cabinets containing cannabis, edibles, dried cannabis and gummies, a price list for cannabis products located in the display cases, pipes, and bongs... definitely a shop for sale of cannabis... a POS for transactions... To me, it was definitely a shop for the sale of cannabis products". He also noted the packaged cannabis products bore indications of the THC content therein.

[31] Cst. Solarino testified that he was the *Exhibit Officer* at TFB. He took the aforementioned photographic record of its contents. Those photographs of the

interior and exterior were most helpful in providing a detailed and minute view of what the officers observed including the cannabis products. He explained that he was tasked to photograph the seized items before packaging them for transport. He was also involved in the transportation of the seized items to the RCMP detachment.

[32] The photographs were grouped under two tabs, and some were numbered during his testimony. Tab One contained the photographs taken by Cst. Solarino, but he was clear that he did not take the photographs contained at Tab Two. He surmised, based on the background, that those photographs were taken by another officer at the RCMP detachment where the seized product was weighed; some product was photographed sitting on a scale.

[33] Tab One included: a menu board with costs noted for the various products stated in grams described by strain, edibles, candies, gummies, chocolate bars, CBD, shatter, and live resin, and TFB exterior building sign bearing the business name.

[34] Cst. Solarino testified that the photographs of the menu indicate strains of “what I assume to be cannabis” candy, gummies, chocolate bars, CBD, shatter, and live resin. He photographed shelves containing dried fresh cannabis, a glass display case containing packaged edibles and oils, mason jars of product, a safety deposit box, t-shirts, and bong. He also provided close-up photographs of those items.

[35] Cst. MacDonald testified describing the interior of TFB in a manner similar to that of the other witnesses, and as captured in the photographic record. To his

testimony he added there were no excise duty stamps on any of the cannabis products that he watched Cst. Solarino photograph and bag. He also says he watched as the seized cannabis products were noted down on, what he called, a *Seizure Sheet*. He was not involved in the ultimate transportation of the seized product.

[36] Cst. Brown testified that he moved between the three Millbrook search sites assisting other members. He handled what he described as “the loose items found inside the building”, recorded them on an inventory checklist, and assisted in moving them into a U-Haul truck for transport to Seized Property Management Division (SPMD). He watched Csts. Solarino and McDonald seize the cannabis located in TFB but could not say if the cannabis from all three search sites were transported to the RCMP detachment in the same U-Haul because, while he wrote a list of items located inside the buildings, he was not tasked with cataloguing the cannabis.

[37] Cst. Brown also testified that TFB was sitting on cinderblocks and the assistance warrant permitted an electrician to disconnect the power source prior to SPMD seizing the building.

[38] His final task back at the detachment was assisting other officers to identify which seized cannabis items to sample in aid of sending to the laboratory. Cst. Solarino explained that those samples, sent to the lab by another officer, consisted of samples taken from the larger seized items. For example, the Mason jars

of dried product contained a seizure number and a sample taken from it was given a new number as a sub-exhibit of the main exhibit seized from TFB.

[39] Cst. Solarino placed into evidence *Certificates of Analysis* returned from the lab outlining the results of the analysis of the samples. The *Certificates* confirmed that the samples received and tested at the lab were cannabis and as such required the payment of duty pursuant to the *Excise Act*. A careful review of the certificates showed they were in order, contained the seizure date June 2, 2021, and sample numbers associated to TFB.

[40] On cross-examination, Cst. Solarino confirmed that he and Cst. McDonald helped load the seized cannabis from TFB into a U-Haul for transport, but he could not recall if any other cannabis product from the other search locations was also placed into that vehicle, because he did not enter the other dispensaries.

[41] Cst. Crooks testified that he was the *Exhibit Coordinator* for all three warrants executed in Millbrook. His role was to collect exhibits, process them into the electronic record system, and follow-up to determine whether samples taken were sent to the CBSA lab. He also testified about the *Certificates of Analysis* returned from CBSA, and established the connection between the items seized, the number assigned to each sample, the recording of that number, and the new numbers assigned to the samples taken therein and sent to the lab. He made the connection

between the samples and the resulting certificates that confirmed all the samples were cannabis.

[42] Cst. Burcham testified that he left the scene at approximately 8 pm, by which time all products had been removed from TFB and the barn itself had been hoisted and removed from the property by SPMD. He recalled one cube van was used to collect and transport the seized cannabis product but was unsure if that same truck transported the product seized from the other search locations. He suggested Jackie Anderson, SPMD, who oversaw that aspect of the operation, could better answer the question of how many cube vans may have transported the seized product. Overall, the officer was unaware of exactly how much product was seized from TFB.

[43] Cst. Melanson testified that in addition to providing *Scene Security* at Jason's Convenience Store in Millbrook, he was a *File Coordinator* assigned to query the *Nova Scotia Registry of Joint Stock Companies* (NSRJSC) for all information related to TFB. As such, he sent a letter on April 27, 2021, requesting registration information for TFB business number he obtained from the NSRJSC website and TFB's website. He was in turn provided a certified copy of registration. That document, admissible under the Canada Evidence Act, indicated that as of May 26, 2021, the recognized agent of the Flower Barn Medicinal Remedies is Darren Marshall and the business is located at 876 Willow Street, Millbrook, Nova Scotia. There were no partners listed and the incorporation documents contained the

signature of Darren Marshall. The business was said to be in operation since October 17, 2019.

[44] On cross-examination, defence counsel confirmed that the certified document did not contain a date of birth, telephone number, nor an indication whether Darren Marshall was a Jr. or Sr.

Position of the Crown:

[45] The Crown says the evidence established Darren Marshall operated TFB based on his presence at the search site as well as his name, the business name, and the relevant address on the NSRJSC report. In directing the police officers to leave the site, he also clearly asserted control over TFB in the presence of the cannabis. It would be speculative to conclude the operator was a different Darren Marshall.

[46] The evidence established the cannabis items displayed in TFB were seized, catalogued, transported, and sampled before being sent to the lab for analysis. There were no continuity issues of concern, and the samples were conclusively determined to be, and represented, a significant amount of cannabis and cannabis products. None of the seized cannabis was stamped in accordance with the *Excise Act* attesting to lawful possession or duties paid nationally or provincially.

[47] The evidence also established TFB was set up as a commercial establishment with signage, lists of items for sale, pricing, and a point-of-sale machine all related to the seized cannabis product. There can be no question the purpose of TFB was

offering cannabis for sale. Earlier surveillance supported the conclusion people were using the “drive through window” located on the side of the building. The photographs taken at the scene are determinative that the products were unstamped.

[48] The Crown says it has established beyond a reasonable doubt the elements of each offence for each charge before the Court. This includes the distribution charge. He says there can be no other reasonable conclusion drawn except that unstamped cannabis products were sold and distributed by Mr. Marshall at TFB.

Position of Mr. Marshall:

[49] Mr. Marshall argues the case is circumstantial and proof Darren Marshall engaged in the various offences requires the Court be satisfied that is the only available reasonable inference. (*R. v. Villaroman*, 2016 SCC 33) He points to a lack of specificity contained in the NSRJS documents, noting they do not indicate whether the reference is to Sr. or Jr. As a result, the registration could refer to a different Darren Marshall. Finally, Darren Marshall’s presence at TFB does not overcome the Crown’s inability to establish identity.

Analysis:

[50] The test for drawing inferences in a circumstantial case was set out by our Court of Appeal in *R. v. MacDonald*, 2020 NSCA 69 referencing *Villaroman*:

[37] Where proof beyond a reasonable doubt is based on circumstantial evidence, a trial judge must guard against “too readily drawing inferences of guilt”. An inference of guilt “drawn from circumstantial evidence should be the only reasonable inference that such evidence permits.” (*R. v.*

Villaroman, at para. 30) Reasonable, alternative inferences other than guilt must not be overlooked. As established by the Supreme Court of Canada in Villaroman, “[i]f there are reasonable inferences other than guilt, the Crown’s evidence does not meet the standard of proof beyond a reasonable doubt”. (at para. 35)

[38] In assessing circumstantial evidence, a trial judge is to consider alternative plausible theories and reasonable alternative inferences inconsistent with guilt. Evidence or the lack of evidence may support a reasonable, alternative inference. Villaroman requires trial judges to conduct their analysis in accordance with the “basic question”:

38...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.

[51] There is no question the allegation is one of constructive possession. The principles relating to constructive possession were set out in *R. v. Pham*, [2005] O.J. No. 5127, an Ontario Court of Appeal decision affirmed by the Supreme Court of Canada at 2006 SCC 26, wherein the majority noted at paragraphs 15-17:

15 In order to constitute constructive possession, which is sometimes referred to as attributed possession, there must be knowledge which extends beyond mere quiescent knowledge and discloses some measure of control over the item to be possessed. See *R. v. Caldwell* (1972), 1972 ALTASCAD 33 (CanLII), 7 C.C.C. (2d) 285 (Alberta Supreme Court, Appellate Division); *R. v. Grey* (1996), 1996 CanLII 35 (ON CA), 28 O.R. (3d) 417 (C.A.).

16 In order to constitute joint possession pursuant to section 4(3)(b) of the Code there must be knowledge, consent, and a measure of control on the part of the person deemed to be in possession. See *R. v. Terrence*, 1983 CanLII 51 (SCC), [1983] 1 S.C.R. 357 (S.C.C.); *R. v. Williams* (1998), 1998 CanLII 2557 (ON CA), 40 O.R. (3d) 301 (C.A.); *R. v. Barreau*, 1991 CanLII 241 (BC CA), 9 B.C.A.C. 290, 19 W.A.C. 290 (B.C.C.A.) and *Re: Chambers and the Queen* (1985), 1985 CanLII 169 (ON CA), 20 C.C.C. (3d) 440 (Ont. C.A.).

17 The element of knowledge is dealt with by Watt J. in the case of *R. v. Sparling*, [1988] O.J. No. 107 (Ont. H.C.) at p. 6:

There is no direct evidence of the applicant's knowledge of the presence of narcotics in the residence. It is not essential that there be such evidence for as with any other issue of fact in a criminal proceeding, it may be established by circumstantial evidence. In combination, the finding of narcotics in plain view in the common areas of the residence, the presence of a scale in a bedroom apparently occupied by the applicant, and the applicant's apparent

occupation of the premises may serve to found an inference of the requisite knowledge.

[52] The court of appeal decision in *R. v. Sparling*, [1988] O.J. No. 1877 upheld the above passage as being sufficient evidence to infer knowledge.

[53] Finally, at paragraph 18, while dealing with possession under the *CDSA* but still relevant:

18 The onus is on the Crown to prove beyond a reasonable doubt, all of the essential elements of the offence of possession. This can be accomplished by direct evidence or may be inferred from circumstantial evidence. In *Re: Chambers and the Queen*, supra at 448, Martin J.A. noted that the court may draw "appropriate inferences from evidence that a prohibited drug is found in a room under the control of an accused and where there is also evidence from which an inference may properly be drawn that the accused was aware of the presence of the drug.

[54] The proven facts establish Darren Marshall was not only found in TFB but located standing behind the product display counter in the presence of a large variety of cannabis product clearly exhibited for sale. He also exercised a degree of control in directing the officers to leave TFB. When combined with the NSRJSC data containing his name, I am satisfied the only reasonable inference available is Darren Marshall exercised control over TFB registered in his name. The Court would engage in impermissible speculation to conclude some other unknown Darren Marshall was connected to the operation, and not the man charged with the offences. I also note a person who registers a business chooses how to identify themselves to NSJSC, and the Darren Marshall who registered TFB did not chose to use a Sr. or

Jr. moniker, just as the Darren Marshall who attorned to the Court is not identified with such a moniker.

[55] The Court will not engage in speculation in the absence of some support for such an alternative explanation. As such, I am satisfied that the only rational inference that can be drawn from the circumstantial evidence is that Darren Marshall is the accused before the Court. (See also: *R. v. Lee*, 2012 BCSC 1489 a decision of the late Romilly J.)

[56] Mr. Marshall also argues police did not actually observe purchases of cannabis product occurring inside TFB, and as a result they could not establish that the cannabis located therein was exhibited for sale. The evidence of sale is also circumstantial. The photographs clearly show cannabis product for the sale, with price lists and a POS. The officers observed the presence of people and cars making short visits to TFB, this is consistent with sales, as a result there is evidence from which an inference may properly be drawn that the product on display was in TFB and offered for sale.

[57] Mr. Marshall argues there was an absence of evidence with respect to who weighed the exhibits seized from TFB, noting that Cst. Solarino's evidence that he participated in bagging the exhibits and did not seal or weigh them. He notes Cst. Crooks testified that he packaged the seized cannabis alongside Cst. Burcham and testified that he did not see where the cannabis was seized from. He also argues the

Crown failed to establish continuity of the seized cannabis in the precise location of its seizure.

[58] I cannot accept these arguments based on the evidence. The items that were seized from TFB were listed in inventory and provided numbers that accorded with TFB numbering system, they were transported to the detachment where new exhibit numbers were derived from the original exhibit numbers when samples of the product were removed for transport to the CBSA laboratory. I am satisfied that the evidence established that the items seized from TFB were sufficiently identified so as not to be co-mingled or confused with items seized from the other searched locations.

[59] Mr. Marshall says because of the particularized requirements for conviction under the *Excise Act* the Crown cannot meet its burden for those counts, and as a consequence of a lack of continuity of the exhibits, the Crown cannot meet its burden of proof for the *Cannabis Act* offences.

[60] It is not exactly clear what that argument is meant to address, but as previously stated, the Court is satisfied continuity is not an issue.

[61] Perhaps clarifying the foregoing, defence counsel argues Mr. Marshall cannot be convicted under both sections 9 and 10 of the *Cannabis Act*, because the elements of all these offences are subsumed within each other. That is a valid point, and the

Court awaits argument, prior to sentencing, on the applicability of *Kineapple*, as it was not particularly well explained in oral submissions of either party.

[62] Mr. Marshall also argues that the Crown has an obligation to establish that an exemption in s. 158.11(3) for low-THC cannabis products, and that has not been done. Given the emphasis on whether hemp was found at the seizure site, I conclude that the defence counsel is arguing the Crown has not proven that the cannabis located at TFB is not instead hemp and therefore not subject to the cannabis regime.

[63] With respect, the *Cannabis Act* addresses hemp and cannabis. The results from the lab confirmed the seized product was cannabis and not hemp. The Court will not entertain this argument. The Court is satisfied the product seized from TFB was labelled and taken to the RCMP detachment where samples were taken and sent to a lab and conclusively determined to be cannabis. As such there will be convictions on the remaining counts.

[64] Once again, I am prepared to hear a proper submission as to whether *Kineapple* applies to the distribution and sales charges since they appear to relate to putting the product in the dispensary on offer for sale. I await comment prior to sentence.

Alicia Dawn Brooks and Jason Robert Brooks:

[65] The Agreed Statement of Facts, filed pursuant to section 655 of the *Criminal Code*, acknowledges the June 2, 2021, search conducted at 836 Willow Street,

Millbrook, NS at Jason's Convenience Store. In excess of 1 kg of illicit cannabis marijuana, 277 cannabis edibles, to cannabis plants, and cannabis liquid concentrates were seized from the store. A basketball court, the Millbrook Youth Centre, the Millbrook Elementary School, Children's Daycare, and the Millbrook Gym are located near the store.

[66] Alicia Brooks was arrested at the store and Jason Brooks was later served an appearance notice, and on June 4, 2021, he admitted that he and his wife, Alicia Brooks, operate the store dispensary.

[67] Between April 12, 2021, and May 19, 2021, observations undertaken at the store disclosed active advertising of the sale of cannabis marijuana. Inside the store there is a room to the side where illicit cannabis was being sold.

[68] All exhibits seized from the store were photographed, documented, and secured at the Bible Hill detachment and later processed by Cst. Crooks. That processing included sending samples of the seized exhibits seized to the CBSA laboratory where they were analyzed and confirmed to be cannabis. In addition, the packaging does not meet the requirements under the Excise Act.

[69] From the *Agreed Statement of Facts*, filed for both defendants, the Court draws the conclusion that Alicia Brooks and Jason Brooks operated the convenience store where cannabis was sold without compliance with the *Excise Act*.

[70] Once again, the Court awaits comment on the applicability of *Kineapple* with respect to the *Cannabis Act* charges.

Matthew Cope (HTS Millbrook):

[71] Cst. Bertram testified that “everything was the same as the other dispensaries, observations were made, a meeting was held, warrants obtained, the team gathered, and the warrants were executed – at HTS.

[72] An employee was arrested and released after Mr. Cope arrived on scene and was arrested by Constable Gill.

[73] Constable Bertram entered HTS and saw a similar set up to the other dispensaries with a point-of-sale, cannabis products on display, and a window from which the products could be sold to people outside the store. He had previously observed people visiting the outside window before the day of the search.

[74] Constable Bertram saw Cst. Crooks seize the cannabis product at HTS, and on cross-examination says the teams did not overlap for removals from the different dispensaries. He testified “Dowell, Crooks and other officers were outside. Gill arrested Mr. Cope”. He also testified that similar products were seized from all three dispensaries, although there may have been minor differences.

[75] Constable Brown testified that he entered all three dispensaries and noted similar products in each. Inside HTS he saw two rooms. A large open room with lots of items and another housing cannabis items and a cash register.

[76] Constable Melanson testified that he sought the registration information from the NSRJSC for HTS.

[77] Constable Crooks testified that he was the *Exhibit Coordinator* for the searches, and the Exhibit Officer at HTS. He collected items from the officers and processed them by adding them to the electronic system and following up and sending exhibits to the lab. He entered into evidence the *Certificates of Analysis* related to HTS, testified that HTS was signified by a number 202-148-6199. He also testified about the photographs of HTS.

[78] Once again, Constable Crooks testified that he took custody of the seized product after it was photographed and placed in an exhibit bag and sealed the bags and was able to link the seized item number to the exhibit number and the file number assigned to a particular dispensary. He also took the photographs in HTS and confirmed that the samples taken from the seized items came back to the RCMP with Certificates of Analysis confirming the seized items were cannabis and that they were not stamped in accordance with the *Excise Act*.

HTS Cole Harbour:

[79] Constable Tipper testified that there were five dispensaries in Cole Harbour. He contacted Mr. Cope about HTS and explained that complaints were coming in. He visited HTS in Cole Harbour and spoke with Mr. Cope. Upon execution of the

warrant, he spoke to Mr. Cope about the warrant and called him because the search team located a safe and Mr. Cope attended the scene to provide the combination.

[80] Constable Tipper testified that he logged the cannabis exhibits on site and Constable Milano entered them in the system. Constable Tipper along with Constable McNeil seized and logged each seized item on their seizure form and in their notebook. Samples of the products were sent to Health Canada and came back positive for cannabis. They were not stamped with *Excise Act* labels. Constable Tipper testified that he photographed the individually seized items and seized all the dried product from one room. He identified the photographs in the HTS photograph book. He testified that the cannabis in the store was for sale and there was a pricelist on a whiteboard outside the building with the HTS sign on the door and a window drive through at the back. It was located on Caldwell Road 50 feet from the curb in a freestanding structure on blocks. Inside the dispensary was a fridge containing edibles and different bags of candy packs and brownies in the fridge. He acknowledged that the items were seized in bulk: one bulk seizure of dried cannabis, another bulk seizure of edibles, and a final bulk seizure of vape pins, etc. Overall, he believes they seized and logged 10,000 items. There was no indication any of the seized items were mixed with any seizures from other locations searched that day.

[81] Counsel ultimately consented to admission of the NSRJSC three-page document regarding HTS; the Certificates of Analysis, the books of photographs taken at the HTS locations, an undertaking signed by Mr. Cope; and identification.

[82] Constable Gil testified that he participated in the search at HTS Millbrook and recalled Mr. Cope yelling that the officers were violating his Treaty rights and to get off his land.

Conclusions:

[83] While the evidence was at times jumbled and unclear, after a careful review of my notes and listening to the court record of testimony, I conclude the Crown has established by admissible evidence from credible and reliable historians, the execution of all four warrants resulted in the seizure of cannabis product exhibited therein was made available for sale. Samples of the seized product required Excise Act stamps confirming the payment of duties, both federally and provincially, there were no such stamps.

[84] Since all cannabis products in Canada require *Excise Act* stamps, the Court concludes their absence establishes the product did not come from a cannabis licensee and as a result the defendants received for sale a product that is required to be packaged and stamped under the *Act* that was not so packaged. The *Excise Act* offences have also been proven and convictions will also register on those counts.

[85] So, subject to the submission on *Kineapple* regarding distributing and selling, convictions will enter for all the charges upon which the Crown sought same.

[86] Judgment accordingly.

van der Hoek ACJ