

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Shields, 2014 NSPC 21

Date: May 30, 2014

Docket: 2408446, 2408452, 2408443, 2408449

Registry: Halifax

Between:

Her Majesty the Queen

v.

Kyle Shields and Patrick Scott

TRIAL DECISION

(some identifying information has been removed)

Judge: The Honourable Judge Anne S. Derrick

Heard: December 2 – 13, 2013; January 6, 7, 9, 31, February 17, 18 and 20, 2014

Decision: May 30, 2014

Charges: section 5(1) of the *Controlled Drugs and Substances Act*, and section 465(1) of the *Criminal Code of Canada*

Counsel: Mark Donohue and Jeffrey Moors, for the Crown

Brad Sarson for Kyle Shields; Trevor McGuigan for Patrick Scott

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By the Court:

Introduction

[1] The Crown is alleging that in the period of June 30 to October 11, 2011, Kyle Shields was engaged in the business of trafficking cocaine, a Schedule 1 drug, and that in this time frame he was also involved in a conspiracy “with persons known and unknown” to traffic in cocaine. Patrick Scott is jointly charged on the cocaine trafficking and drug trafficking conspiracy charges, although the investigative narrative that purports to include him does not start until August 9, 2011. The identities of Shields and Scott must be proven by the Crown beyond a reasonable doubt and I will be referring to the person who appears on the scene on August 9 as “Bridgewater” Pat.

[2] Kyle Shields was arrested on October 11, 2011 at [...] Sapphire Crescent. He was asleep in a large bedroom in the basement of the house. He identified himself to Cpl. Darren Slaunwhite as “Kyle.”

[3] Patrick Scott was arrested on December 21, 2011 at 106 Albro Lake Road, an apartment building where police had previously observed someone they believed to be him.

[4] Other individuals were also charged on the original Information - John Field, Ryan MacInnis, and Suzanne Davidson. The Crown alleges that these individuals were co-conspirators with Kyle Shields and also trafficked cocaine.

[5] Trafficking is defined in section 2 of the *Controlled Drugs and Substances Act (CDSA)*. It means (a) to sell, administer, give, transfer, transport, send or deliver the substance, or (c) to offer to do any of these things, otherwise than under the authority of the regulations.

[6] The Crown’s case, arising out of a drug investigation named H-Timber, relies on Part VI intercepts of voice and text conversations, physical surveillance, expert evidence, and the seizure of exhibits. The intercepted private communications are telephone conversations, text messages, and Blackberry Messenger (BBM) text messages.

[7] There is a very significant amount of evidence to be analyzed in this case. Crown counsel says it amounts to an overwhelming case against Shields and Scott. Mr. Sarson and Mr. McGuigan submit that enough of the evidence is ambiguous, unclear, and inconsistent with the charges to raise a reasonable doubt.

The Organizational Structure of this Decision

[8] My reasons are organized into seven parts: Part I deals with first principles; Part II deals with the targets of the Part VI authorizations, the general issue of identity and the specific issue of the identification of Kyle Shields; Part III deals with the expert evidence of Sgt. Gordon Vail; Part IV deals with the admissibility of the intercept evidence; Part V with circumstantial evidence and the drawing of inferences; Part VI deals with someone identified on the intercepts as “Bridgewater” Pat whom the Crown alleges is Patrick Scott; and Part VII deals with the conspiracy charge.

The Case against Kyle Shields and Patrick Scott

[9] The fundamental issue in this case is whether the Crown has proven beyond a reasonable doubt that Kyle Shields and Patrick Scott were trafficking cocaine during the summer and into the early fall of 2011. As there is no direct evidence of trafficking, the Crown relies heavily on the Part VI intercepts and Sgt. Vail’s testimony about them, reliance that has led to the Defence attacking the interpretation of the intercepts urged by the Crown and Sgt. Vail’s opinions underpinning that interpretation. The Crown has conceded that its prosecution fails unless it is able to prove beyond a reasonable doubt that there was trafficking by Shields and Scott in cocaine. Even if I am satisfied there was trafficking in a controlled substance and a conspiracy to traffic in it, there is no basis for convictions unless the Crown clears the hurdle of proof beyond a reasonable doubt that the controlled substance was cocaine.

PART I – First Principles: The Presumption of Innocence and Reasonable Doubt

[10] Defence counsel have correctly emphasized that it is not the responsibility of Shields and Scott to demonstrate, establish, or prove their innocence or to explain away the allegations made against them. They are not required to explain the evidence presented by the Crown. They are each presumed to be innocent until

proven guilty beyond a reasonable doubt. The Crown bears this onus of proof beyond a reasonable doubt throughout the trial and it never shifts.

[11] The onus resting upon the Crown to prove guilt beyond a reasonable doubt is inextricably linked to the presumption of innocence. (*R. v. Lifchus*, [1997] S.C.J. No. 77, paragraph 27) A reasonable doubt is a doubt based on reason and common sense which must be logically based upon the evidence or lack of evidence. A reasonable doubt is not a doubt based on sympathy or prejudice, or one that is imaginary or frivolous. Proof establishing the probability of guilt is not sufficient to establish guilt beyond a reasonable doubt. It is not proof beyond a reasonable doubt when guilt is suspected. Proof beyond a reasonable doubt falls much closer to absolute certainty than it does to a balance of probabilities. (*R. v. Lifchus*, paragraph 36; *R. v. Starr*, [2000] S.C.J. No. 40, paragraph 242)

PART II – *Introducing the Targets and the Evidence of Identity*

Authorizations to Intercept Private Communications

[12] On June 29, 2011, a Part VI Authorization was granted by Justice Heather Robertson. (*Exhibit 2*) The primary individuals targeted were SD, Kyle Ernest Shields of [...] Sapphire Crescent, Lower Sackville and John Willis Field of [...] Charles Road, Timberlea who were identified as “Principal Known Persons.” The authorization identified “Other Known Persons” for interception and observation as including: MB, KD , and Ryan MacInnis.

[13] A further Authorization was granted on August 24, 2011 by Justice Patrick Duncan (*Exhibit 3*) for the interception of the communications of SD, Kyle Shields, and John Field. In addition to these “Principal Known Persons”, “Other Known Persons” were identified and included MB, KD, Ryan MacInnis, RC, Suzanne Davidson, and JW.

[14] The August 24 authorization permitted the interception of the communications of Kyle Shields and John Field when made over devices that included Blackberry device with PIN # 230B7844 (alleged to be used by Kyle Shields) and Blackberry device with PIN # 23964853 (alleged to be used by John Field.)

Voice Identification – General

[15] Identity is an essential element in this case to be proven by the Crown beyond a reasonable doubt. Central to this prosecution is the identity of the speakers on the intercepts. Shields and Scott have put voice identification on the intercepts in issue: they do not concede that it is either of their voices on any of the intercepts. They also do not concede that they are the authors of any of the relevant text messages.

[16] Shields and Scott do however concede the identities of John Field and Ryan MacInnis as the speakers and texters captured by the intercepts. I can say from having listened to these calls that even without the Defence concession on the issue of the identity of John Field's voice, I readily came to know it was his voice. John Field's voice is quite high-pitched and he has a noticeable tendency to speak rapidly.

[17] Where evidence is given as it has been here, by police officers as to voice identification, the officers are testifying as witnesses of fact based on their familiarity with the voice. It is not necessary for the trier of fact to hear from an expert. (*R. v. Williams*, [1995] O.J. No. 1012 (C.A.), page 5 (Q.L. version) Where voice identification is in issue, the trier of fact must decide the weight to be given to the evidence led for the purpose of identifying who was talking on the intercepted recordings. A judge is entitled to use her own senses to evaluate the recorded voices as part of determining the issue. (*R. v. Wu*, [2010] A.J. No. 1327 (C.A.), paragraph 50)

[18] These principles apply to the assessment of the voice identification issue for each of the accused although I will not be dealing with the issue of identity in relation to Patrick Scott until later in these reasons.

Voice Identification – Kyle Shields

[19] There are several sources from which the Crown draws its evidence for the identification of Kyle Shields' voice – intercepted calls where Shields identified himself or was identified, the police interview (*Exhibit 107*) in which Shields can be heard speaking, and the evidence of Cpl. Charla Keddy, who listened to 17,000

intercepted calls which, according to her, enabled her to be able to identify Kyle Shields' voice.

[20] I found I did not have to resort to considering what weight to give Cpl. Keddy's opinion about Kyle Shields' voice. There were enough occasions where Shields identified himself or was identified, including in the context of his police interview, to enable me to familiarize myself with the distinctive characteristics of his voice. Shields' voice has a deep tone and his speech has a drawn-out, languid quality.

[21] The Crown introduced five intercepted calls in which Kyle Shields identifies himself. These calls occurred on July 4, 2011 (*Sessions 504 and 152*), July 20, 2011 (*Session 4458*), August 2, 2011 (*Session 4891*), and October 9, 2011 (*Session 12883*).

[22] On July 4, 2011 a call was made from 802-5449 (*Session 504*). Kyle Shields identified himself in an inquiry about an impounded car. He left a message indicating his name is Kyle Shields and that he can be reached at 802-5449.

[23] The evidence establishes that 802-5449 was a number subscribed to a Kyle Shields of [...] Sapphire Crescent in Lower Sackville.

[24] Another call (*Session 152*) was made about the impounded car on July 4, about 20 minutes after Session 504. The call was placed by someone using a number subscribed to an E.S., [...]. Once the call had been answered, the phone was handed over to a man who identified himself as Kyle Shields. Shields explained the situation with the impounded car and his frustrations about its status.

[25] On July 30, 2011, Shields had a lengthy telephone call (*Session 4558*). He used 802-5449 and in placing an order for a skincare product, provided his name, mobile phone number (902 802 5449) and his address ([...] Sapphire Crescent, Lower Sackville) with its postal code.

[26] On August 2, 2011, there was a call from 802-5449 to someone in Fort McMurray (*Session 4891*). The man leaving the voice mail message identified himself as "Kyle."

[27] On October 9, 2011, Shields placed a take-away order with May Gardens Chinese Food in Sackville (*Session 12883*). He used his mobile phone – 802 5449. He gave his name – Kyle, his address – [...] Sapphire Crescent, and his mobile phone number – 802 5449. He also made the request that the delivery be made to the side door of [...] Sapphire.

[28] At the material times, Kyle Shields was living at [...] Sapphire Crescent in Lower Sackville.

[29] Other calls also identify Kyle Shields as one of the speakers. On July 7 (*Session 280*), a caller asks for “Kyle”. The individual who comes to the phone later in the call identifies himself as “Shields.” In Session 692 on July 22, a caller asks for “Kyle” and Shields takes the phone. On August 5, in a telephone conversation between Suzanne Davidson and someone using the mobile phone subscribed to Kyle Shields, Davidson refers to the man she is talking to as “Kyle”. (*Session 5294*)

[30] There is a telephone conversation on August 21 between the person alleged by the Crown to be Kyle Shields and Ryan MacInnis at 19:02:23 hours. (*Session 7434*) MacInnis is trying to learn to play guitar. Shields is in a jolly mood. He playfully suggests that “Dad” could probably show MacInnis “a few things” and goes on to explain: “I said, you know Daddy out here...Like I’m multi-talented, bro. You just think Shields is just...This big guy, big and sexy and he can’t do nothing else?...Not only is he, ah, musically gifted but he’s a multi-talent on the football, baseball and hockey fields...I’m not too good at the guitar buddy...I said, Dad’s not too good with musically-wise on the guitar.”

[31] It is obvious from Shields’s jovial comments that he is referring to himself, that “Dad” is him, and he identifies himself as “Shields”.

The Police Interview of Kyle Shields

[32] The interview (*Exhibit 107*) of Kyle Shields following his arrest on October 11, 2011 was admitted into evidence for the sole purpose of voice identification.

[33] Shields tells Cst. Racicot he is hung over and tired and emphasizes that he will not talk. He does however have enough of a conversation with Cst. Racicot for

me to assess his voice. In the conversation Shields refuses to discuss anything related to the investigation. In the back and forth between him and Cst. Racicot such as it is, Shields denies any knowledge of the investigation and what is being alleged against him.

[34] At various times, Shields refers to Cst. Racicot as “bro” and has the same languid, unperturbed manner of speech. His voice in the interview sounds the same as the voice the Crown purports is the voice of Kyle Shields on the intercepts. The voice has the same intonation and timbre. It sounds as though Shields may have a slight cold or congestion and he coughs a few times through the interview but the voice is unmistakably the same.

[35] In addition to saying “bro” the same way he does on the intercepts, Shields also says at one point “100 percent”, exactly the way the voice on the intercepts alleged to be Kyle Shields says it. He also says at the end of the interview: “I can’t help you, man” in the same voice heard on the intercepts that the Crown alleges is Kyle Shields’ voice.

[36] I have listened, several times, to the numerous intercepted telephone conversations between June 30 and October 10, 2011, in which the Crown alleges that Kyle Shields was a participant. These include the calls I described earlier. I am satisfied beyond a reasonable doubt that the voice alleged by the Crown in the intercepted calls is the voice of Kyle Shields. It is the same voice as the voice in the self-identifying calls and, as I have noted, is quite distinctive. I came to recognize the voice with its low register and lazy cadence, again and again in the calls.

[37] The intercepted calls also acquainted me with Kyle Shields. Not only did I come to recognize his voice but the content of the calls revealed consistent features of his lifestyle and personality. Kyle Shields liked to eat out and enjoyed drinking. He did not appear to be working: certainly he slept late and had a lot of flexibility in his schedule throughout the week. Whereas his contacts mentioned their work, Shields never did. He liked to go to the gym and work out, was an enthusiastic fan of spinning classes, played softball, and was unfailingly accommodating, easy-going, and unflappable.

[38] The evidence establishes beyond a reasonable doubt that Kyle Shields spoke regularly on a mobile phone subscribed to him with the number 802 5449. I am satisfied beyond a reasonable doubt that he also texted using that phone. There is no evidence that sheds any doubt on this: 802 5449 was Kyle Shields' mobile phone and throughout the Part VI investigation, he used it exclusively to make and receive calls and send and receive texts.

BBM Messaging

[39] The Crown introduced intercepted BBM messages for August 14, September 19, 26, 29 and 30. (*Exhibit 11*) Cst. Skidmore, the lead investigator for this Operation H-Timber file, testified that when the authorization is granted for a BBM interception, there is information that supports the device belonging to the named individual and ties the subscriber to that PIN #. Cst. Skidmore testified that a PIN is specific to a device, not a phone number. The Blackberry messages (BBM) are logged by Blackberry and downloaded by a "PIN dump". The investigators got them once a day.

[40] The time shown on the BBM is the time assigned by Blackberry – UTC, the Universal Time Coordinate which is the same as Greenwich time. The evidence indicated that UTC/Greenwich time is four hours ahead of local Halifax time.

[41] I am satisfied beyond a reasonable doubt that Kyle Shields sent the BBM messages which the Crown alleges were messages from him. Nothing else makes sense: there is nothing to suggest that anyone other than Kyle Shields was using the device with the PIN # subscribed to him. And certain individuals, for example, John Field, who were using the BBM messaging service to communicate with Shields, also communicated regularly with Shields via his cell phone. None of the intercepted conversations indicate that Field was BBM messaging PIN #230B7844 with someone other than Kyle Shields. The only reasonable inference to be made is that there would have been some mention of this by either Shields or Field.

[42] As will be evident from my reasons in due course, the content of the BBM messages also leaves no doubt that they were being exchanged by the parties tied by PIN # to their respective devices. The BBM messages fit seamlessly into the texting and calls also occurring between Kyle Shields and various individuals

including John Field. I also note that a cell phone and Blackberry device were seized by police from [...] Sapphire Crescent. (*Exhibits 30 and 31*)

Kyle Shields' Vehicles

[43] Police surveillance included visual observations of vehicles driven by Kyle Shields. He had two vehicles registered in his name: a black convertible BMW, Licence Number EUK 333 and a grey Volkswagon Jetta. Police officers conducting surveillance throughout the investigation saw him in those vehicles.

PART III - The Expert Evidence of Sgt. Gordon Vail

[44] At the start of these reasons I identified the types of evidence which the Crown has relied on to build its case against Shields and Scott. I am going to provide some greater detail now of the evidence of Sgt. Vail who testified at length about illegal drugs and drug trafficking and also gave his opinion about the intercepted communications. At this time I am going to give an overview of Sgt. Vail's testimony about the drug trade. I will later discuss his evidence about the intercepts.

Qualifying the Drug Trafficking Expert

[45] Sgt. Gordon Vail was qualified to provide opinion evidence in relation to:

- the packaging, pricing, quantities, jargon, paraphernalia, distribution, and use of cannabis marijuana, cannabis resin, cocaine hydrochloride, and MDMA; and
- the interpretation of private communication within the context of coded conversations and drug subculture terminology; and
- the features of drug distribution networks which include the use of "couriers/runners", stash locations, counter surveillance techniques, and drug distribution network hierarchies.

[46] Sgt. Vail was qualified without objection from Shields and Scott although Defence counsel expressed some reservations about Sgt. Vail's expertise and made submissions about the weight his evidence should be given, which I will discuss in

due course. The Defence position rested largely on the fact that Sgt. Vail's primary roles in recent years have not involved cocaine and cannabis trafficking.

[47] I note that in the Supreme Court of Canada's recent decision of *R. v. Sekhon* [2014] S.C.J. No. 15, LeBel, J. (in dissent but not on this point) observed, "A substantial body of case law supports the admission of evidence from experienced police officers on such subjects as the organization of the illegal drug trade, methods of transporting and selling drugs, methods for avoiding the detection of drugs, and drug jargon", citing *R. v. Joyal* (1990), 55 C.C.C. (3d) 233 (Que. C.A.); *R. v. Ballony-Reeder*, 2001 BCCA 293; *R. v. Klassen*, 2003 MBQB 253 (paragraph 73).

[48] The cautions of LeBel, J. in *Sekhon* are worth repeating here:

[74] ...The customs of the illegal drug trade will generally be relevant to the matters at issue in drug trials. Such customs are likely to be outside the knowledge of the trier of fact, so evidence about them will be necessary to assist him or her in assessing the other evidence that has been adduced. Moreover, it is open to a trial judge to conclude that a police officer is qualified to give expert evidence on the basis of the officer's experience and training in the investigation of drug-related crimes.

[75] At the same time, this Court has repeatedly cautioned that expert evidence must not be allowed to usurp the role of the trier of fact. The trier of fact, whether a judge or a jury, is responsible for deciding the questions in issue at trial. Judges must be especially cautious where the testimony of police expert witnesses is concerned, as such evidence could amount to nothing more than the Crown's theory of the case cloaked with an aura of expertise. The courts have clearly recognized the risk that expert evidence could usurp the role of the trier of fact in the assessment of credibility, and even in the decision on

the ultimate issue of guilt or innocence. I see no reason to believe that this danger is less real where the evidence is given by a state agent like a police officer rather than by a scientific expert.

[76] The *Mohan* requirement of necessity is the primary safeguard against the inappropriate proliferation of expert evidence. But even where the expert's evidence is broadly necessary, as in this case, it should be assessed with special scrutiny as it approaches the "ultimate issue": *Mohan*, at p. 24; *R. v. J.-L.J.*, 2000 SCC 51, [2000] 2 S.C.R. 600, at para. 37. The decision to qualify an expert witness does not end the need for scrutiny of the expert's evidence. A properly qualified expert could stray into expressing inadmissible opinions about the guilt of an accused, and the trial judge must ensure that the expert's testimony stays within the proper boundaries of such evidence and maintain the integrity and independence of his or her own fact-finding function as regards the credibility of witnesses and the guilt or innocence of the accused.

Sgt. Vail's Qualifications

[49] Sgt. Vail's *curriculum vitae* (*cv*) was entered as Exhibit 117. He has been a member of the RCMP since 1990. Since 2011 he has been the Sergeant/Investigator with "H" Division Professional Standards Unit. In this role he is responsible for Code of Conduct investigations relating to RCMP members employed in Nova Scotia.

[50] From August 2010 to September 2011, Sgt. Vail was the Shift Supervisor for the Halifax District RCMP Tantallon Office. He was responsible for the supervision of shift Constables and provided guidance and direction in investigations that included, but were not restricted to, *CDSA* matters.

[51] During the period of October 2005 to August 2010, Sgt. Vail was NCO in charge of the Synthetic Drug Operations Unit and responsible for synthetic drug

investigations and the dismantling of synthetic drug labs in Nova Scotia and Newfoundland. His work included lectures concerning the production and identification of methamphetamine and ecstasy.

[52] It was in the period of October 1997 to October 2005 and during investigations in July 2007 and September 2008 that Sgt. Vail was most recently engaged directly with the cocaine and cannabis drug trade. His *cv* notes that he was involved in several major drug importation cases where both cannabis and cocaine were found in the multi-kilogram and ton weight. He assisted with the surveillance of targets and the handling of exhibits, noting concealment and packaging techniques. He was also involved in street level investigations of cocaine and crack cocaine trafficking and performed duties that included surveillance, take-downs, searches, and interrogations of suspects. Sgt. Vail acted as cover person for police agents involved in the evidentiary purchase of controlled substances and interaction with confidential human sources.

[53] Sgt. Vail's duties during this eight year period included the preparation of Part VI investigations, and the coordination of major project files which focused on the trafficking networks of multi-kilogram drug dealers.

[54] I also note that from March 1994 to March 1995, Sgt. Vail was part of a two member street level drug enforcement team out of the Lower Sackville Detachment. He was involved with numerous street level investigations of cannabis marijuana, cannabis resin, crack cocaine, and psilocybin. He dealt with sources and conducted numerous residential and vehicle searches leading to the seizure of these controlled substances.

[55] Sgt. Vail's *cv* indicates that over the years he has taken courses that have included such subjects as drug pricing and packaging, drug identification and field testing, national and international drug trafficking trends, surveillance, warrant preparation, source handling, and raid planning (two week Drug Investigational Techniques Course – August 1998); forms of trafficking, methods of packaging and distribution and prices and paraphernalia (three week Operational Undercover Training Course – October 1999).

[56] Some of the investigations that Sgt. Vail has been involved in include:

- Operation “Hurry” – December 8, 1997 to December 17, 1997, a controlled delivery and Part VI investigation involving one accused and 700 grams of cocaine. Sgt. Vail had duties as the exhibit officer and dealt with packaging, concealment, reviewing transcripts of private communications, and dealing with a police agent.
- Operation “Hovel” – April 1998 to October 1998, a street level cocaine investigation involving seven accused and cocaine/crack cocaine (grams/eight balls) and cannabis resin and marijuana (grams/ounces). Sgt. Vail’s duties included file coordinator, exhibits, surveillance, and agent handler.
- Operation “Hammer” – September 1999 to December 2001, a Part VI investigation involving nine accused and cannabis resin, cannabis marijuana, and cocaine (possession for the purpose of trafficking and conspiracy). Sgt. Vail’s duties included exhibits, reviewing intercepts of private communications, agent handler, surveillance, and packaging.
- Operation “Horn” – May 2003 to June 2004, a Part VI investigation involving nine accused and cocaine, crack cocaine, and cannabis marijuana (possession for the purpose of trafficking and conspiracy.) Sgt. Vail’s duties included surveillance, reviewing the intercepts of private communications, exhibit person, and packaging.
- Operation “Herdsman” – January 2005 to September 2005, a Part VI investigation involving twenty accused (trafficking, possession for the purpose of trafficking, and conspiracy) and the utilization of an undercover operator. Sgt. Vail was the lead investigator whose responsibilities included surveillance, reviewing intercepts of private communications, exhibits, packaging, cover person and suspect interviews. Operation Herdsman involved intra-provincial cocaine trafficking, and drug distribution networks that trafficked crack cocaine, cocaine, and ecstasy via “dial a dope” operations and crack houses.

- Operation “Huda” – July 2007, an undercover operation involving nine accused and the purchase of cocaine, crack cocaine, and cannabis (trafficking). Sgt. Vail was the cover person for the operation.
- Operation “Ivory” – September 2008, an undercover operation involving four accused and the purchase of crack cocaine (trafficking). Sgt. Vail was the cover person for the operation.

[57] Sgt. Vail has also been involved in investigations, including Part VI investigations, of interprovincial trafficking and importation of cannabis marijuana, cannabis resin, cocaine, and MDMA, and investigations of indoor cannabis marijuana “grows.”

[58] In the period of November 2004 to November 2013, Sgt. Vail was qualified in the Provincial and Supreme Courts of Nova Scotia as an expert on the same basis as in this case on 27 occasions. In April 2012, Sgt. Vail was qualified as an expert in the Nunavut Court of Justice in Iqaluit. Eighteen of these occasions involved testimony concerning cocaine and/or crack cocaine. On eight occasions Sgt. Vail testified about cannabis marijuana or resin either exclusively or in addition to giving evidence about cocaine or other drugs.

[59] Sgt. Vail testified to having authored over 150 expert reports, primarily dealing with cocaine, crack cocaine, cannabis marijuana, and cannabis resin. The Defence established that Sgt. Vail has disagreed with the Crown theory of the case on only a handful of occasions. However I do not know what formed the basis of the disagreement and whether, for example, on a charge of possession for the purpose of trafficking, Sgt. Vail viewed the evidence as making a case for personal possession.

[60] While I will have more to say about Sgt. Vail’s evidence later in these reasons, I can say that I accept his expertise as it relates to the drug trade for cocaine and cannabis marijuana. I find that his significant experience satisfies me he possesses the “special knowledge and experience going beyond that of the trier of fact.” (*R. v. Marquard*, [1993] S.C.J. No. 119) His opinion evidence meets the *Mohan* criteria. (*R. v. Mohan*, [1994] S.C.J. No. 36) I note that he testified to

having kept his knowledge current by regular consultations with drug investigators and undercover operators.

[61] I wish to emphasize that while Sgt. Vail offered his opinion about the subject matter of certain intercepts the ultimate determination about the intercepts has been mine to make. I have drawn the inferences I consider are supported by the evidence. Logic, common sense, and context have assisted me in my interpretation of the telephone conversations and texts. Sgt. Vail's expertise has informed my understanding of the drug trade and assisted me in my assessment of what was being discussed in the intercepted communications.

Sgt. Vail's Preparations

[62] In preparation of his expert report, Sgt. Vail reviewed intercepted private communications - in the case of some intercepts, numerous times, police notes, photographs, the Crown brief, video surveillance, and cautioned statements. In October 2013 he attended the RCMP exhibit vault and again reviewed the exhibits for this case. Sgt. Vail described the utility of Part VI intercepts in a drug investigation: intercepts allow police to look into how drug distribution networks operate.

Drug Distribution Networks

[63] Sgt. Vail testified that drug distribution networks are hierarchical and that individuals at the top of the hierarchy seek to isolate themselves from police interdiction. Traffickers tend to employ people with whom they have developed a trusted relationship. They avoid selling to people they either don't know or who have not been vouched for by others in their inner circle. Traffickers are keenly aware of police investigative techniques and the use of confidential sources.

[64] Sgt. Vail testified that the drug business, like other commercial enterprises, has as its objective, incurring and maintaining the profit margin. In Sgt. Vail's words: "It is all about incurring profit and continuing the profit cycle."

[65] Sgt. Vail noted that many traffickers will engage in multi-commodity sales to attract a broader range of clients by selling a variety of products. The products

being sold can be both controlled and non-controlled substances. Sgt. Vail testified that product diversification means more clients and increased profit margins.

Categories of Traffickers

[66] Sgt. Vail testified that the three main categories of traffickers in the Halifax marketplace are high-level, mid-level, and street level. High level traffickers are able to purchase and distribute 10 to 20 kilogram amounts per month. The lower end of high-level trafficking would involve purchasing and distributing single kilogram and half-kilogram amounts. Mid-level traffickers deal in less than half-kilogram amounts. Their trade is in 250 gram- and 100 gram- and down to ounce level-amounts. Street level traffickers deal in ounce amounts at the higher end, down to gram amounts.

Trafficking Cocaine and the Practices of “Stepping On”, “Shorting” and “Fronting”

[67] Cocaine is produced in Peru, Bolivia, and Columbia and exported from either Columbia or Mexico by the ton. Large scale organized crime groups will export ton amounts which they have purchased in bulk and then sell in lower weights at higher prices, immediately increasing their profits.

[68] Certain Canadian markets are bigger than Nova Scotia, due to population, such as Ontario and British Columbia. Sgt. Vail described a high end dealer in Nova Scotia as someone who imports five to ten kilograms

[69] As cocaine moves down the drug distribution network, it gets adulterated or “stepped on.” The addition of non-controlled substances such as benzocaine, lidocaine, novocaine, or caffeine reduces the purity of the cocaine but increases volume thereby enhancing the profit margin of the seller.

[70] Kilogram amounts of cocaine are usually packaged in bricks with wrapping and tape. In order to create the illusion of purity, “stepped on” cocaine will be re-compressed into a brick with the use of a hydraulic press. As Sgt. Vail explained: “Savvy individuals will step on the cocaine and then re-press it to make it look unadulterated.” It was Sgt. Vail’s evidence that hydraulic presses are a “clear cut indicator of cocaine being stepped on.”

[71] Sgt. Vail gave an example of how adulterated cocaine earns a profit for the trafficker. The trafficker who buys 100 grams of cocaine for \$5000 has paid \$50 a gram for his purchase. He can then “step on” that 100 grams, bulk up his inventory, and sell the further adulterated product for \$100 per gram. A mid-level drug trafficker could purchase 100 grams of 70 percent pure cocaine hydrochloride, add 100 grams of a cutting agent such as lidocaine, and have 100 additional grams of 35 percent pure product to sell for a profit.

[72] In addition to purchasing in bulk and selling lesser amounts at higher prices and “stepping on” the product, drug traffickers increase their profit margins by “shorting” their purchasers. For example, Sgt. Vail explained, a “street ounce” of cocaine is normally 24 to 26 grams whereas an actual ounce is 28 grams. An “eight ball” of crack cocaine is supposed to be 3.5 grams but purchased on the street an “eight ball” may be as little as 1.8 to 2.5 grams. A street gram of cocaine will not weigh out as a gram, it may actually only weigh .8 of a gram. The “shorting” process is achieved through the use of scales. A drug trafficker may purchase 50 grams of “stepped on” cocaine which he then breaks down using scales that can weigh to a tenth of a gram, and sells in smaller, “shorted” street amounts. “Shorting” enhances the trafficker’s profit margin.

[73] Drug traffickers rely on trusted relationships and vouching by trusted associates. Trust functions not only in determining who gets access to a trafficker, it may also lubricate the business aspect of the transaction. Trust underpins the concept of “fronting”, where a purchaser takes possession of the drug with payment to the seller being deferred. Sgt. Vail explained that “fronting” occurs regularly in mid- and street-level trafficking.

[74] As the drug business is primarily a cash-only business, the fronter will only accept cash and will set the terms of when and how the drug indebtedness is to be paid. He will accept deferred payment only as long as he can continue the business cycle. Sgt. Vail testified that in his experience services or labour may sometimes be accepted for the repayment of drug debts.

[75] Trusted people may also benefit from discounted prices. A trafficker may offer a discounted price to long-standing, regular clients. Sgt. Vail testified that there is no discounting at the lowest street level of sales, the gram level.

Stash Houses

[76] Traffickers higher up the drug distribution network often use off-site locations for storing their inventory. Sgt. Vail testified that stash houses are used regularly in the cocaine trade. It was Sgt. Vail's evidence that it is very rare for higher level drug distributors to keep large amounts of cocaine at their residences because they are aware of the risk of a section 11 *CDSA* warrant being executed. Cocaine traffickers want to avoid the loss of any of their expensive product due to drug-rips or police seizures so they tend to safeguard it using stash houses.

[77] Trust is a factor in the relationships developed by higher level drug traffickers and the individuals they put in charge of the stash houses.

[78] As street level traffickers can't afford a stash house, they carry smaller amounts of an adulterated product and rely on a number of clients. They need to sell frequently as they are vulnerable to section 11 *Controlled Drugs and Substances Act (CDSA)* searches and vehicle stops. The street level trafficker is aware that being found in possession of large amounts of cocaine can lead to charges under section 5(2) of the *CDSA*, possession for the purpose of trafficking. Sgt. Vail testified that Part VI intercepts show that drug traffickers, including at the street level, are aware of the risks of heavier sentences for section 5(2) convictions.

Guarded Conversations and Coded Language

[79] Sgt. Vail testified that awareness of police investigative techniques and Part VI intercepts has led drug traffickers to engage in guarded conversations and use coded language. He offered the example of arranging a meeting: rather than using specific terms that characterize a discussion about a legitimate subject, drug traffickers will use guarded language, saying, "Let's meet at that spot" or "Let's meet where we met last week." The product that is the subject of the transaction either won't be mentioned or coded terminology will be used. Sgt. Vail has heard many coded terms for cocaine.

[80] Sgt. Vail acknowledged that none of the terminology used in the intercepted private communications in this case was familiar to him and did not constitute universal terms for the drugs the Crown alleges were being discussed. Universal

terms for cocaine are “white” and “blow”. “Green” and “weed” are universal terms for cannabis.

[81] Sgt. Vail testified that individuals who are “deeply entrenched in the drug trade” are very careful on the telephone because they are aware of police investigative techniques.

Keeping Accounts – Cash and Score Sheets

[82] Sgt. Vail testified that the drug business is a cash and carry business. As large deposits are likely to attract police investigation, drug traffickers keep cash on hand. Score sheets are used to keep track of what is owed. The accounting is “very rudimentary, very elementary” and in Sgt. Vail’s experience, names, initials and numbers are used.

The Use of Phones

[83] Sgt. Vail testified that drug traffickers use nominees for their phones and register them in fictitious names or the names of associates with no criminal histories. Drug traffickers tend to only give out their phone numbers to people they know. Phones will get changed and if the trafficker is arrested, he will abandon the pre-arrest phone and get a new one.

Pricing Cocaine Hydrochloride and Crack Cocaine

[84] Cocaine is never sold in pound amounts: it is always sold in kilogram, gram, and ounce amounts.

[85] Sgt. Vail testified that in October 2011, a kilogram of cocaine hydrochloride – powder cocaine – sold for \$47,000 to \$49,000 per kilogram in Nova Scotia. Five hundred grams or half a kilogram sold for \$24,000 to \$26,000. One hundred grams sold for \$5000 to \$5500. An ounce of cocaine fetched \$1800 to \$2200 and a gram of cocaine went for \$80 to \$100. Gram and half-gram amounts of cocaine hydrochloride are the weights at the lowest level of purchase.

[86] Sgt. Vail testified that the prices he quoted were subject to variation depending on the purity of the cocaine, that is, the extent to which it had been adulterated or “stepped on.”

[87] These prices were identical for crack cocaine which is easily made from cocaine hydrochloride using baking soda, water and heat.

[88] Crack cocaine is sold in amounts as small as 20 “rocks” which is two-tenths of a gram. In 2011 this amount of crack cocaine sold for \$20.

[89] Sgt. Vail noted that cocaine hydrochloride and crack cocaine are very addictive with the result that users are constantly after their suppliers, sometimes twice a day. In Operation Herdsman, a dial-a-dope case, during the six months of the Part VI intercepts there were 90,000 intercepted calls.

Trafficking Cannabis Marijuana

[90] Cannabis marijuana is most commonly grown indoors in soil. It is sold in pound, ounce, and gram amounts. Pricing may vary depending on the strain as some strains are more sought after. Sgt. Vail testified that in 2011, a pound of marijuana in a multi-pound transaction was selling for \$1300 to \$1500; a pound on its own sold for \$1800 to \$2600; an ounce sold for \$200 to \$300; and a gram sold for \$10 to \$20. Only very high quality cannabis marijuana sold for as much as \$20 a gram.

[91] Sgt. Vail testified that the profit margins for marijuana are lower as it cannot be “stepped on.” Traffickers buy in bulk and sell in lower quantities for higher prices. The only other method available to a marijuana trafficker for increasing the profit margin is to “short” purchasers.

[92] Sgt. Vail acknowledged that sometimes “shake” is added to what is sold. In cannabis marijuana, “shake” is essentially what chaff is to wheat.

[93] Typically stash houses are not used as much by mid-level marijuana traffickers as they are by mid-level cocaine traffickers. Sgt. Vail testified that traffickers are acutely aware that the penalties for marijuana trafficking are lower than the penalties for cocaine trafficking. Guarded conversations and coded language is still used but it was Sgt. Vail’s evidence that guarded conversations are not resorted to as much by marijuana traffickers as by cocaine traffickers.

[94] Another difference in the marijuana trade according to Sgt. Vail is the extent to which the trafficker is being contacted by purchasers. Sgt. Vail testified that

based on his experience, purchasers are not calling their supplier every day for grams of cannabis marijuana “because marijuana is not cost prohibitive and a personal user can buy an ounce to keep going.” Sgt. Vail did acknowledge that the active ingredient in marijuana, THC, does degrade and the product has to be stored carefully to preserve its potency.

PART IV – *The Admissibility of the Intercept Evidence*

[95] Although there has been no challenge to the admissibility of the Part VI intercept evidence, I am going to briefly address the legal principles that permit me to consider this evidence on the cocaine trafficking charges. I will later discuss how the intercepts are to be considered in relation to the conspiracy charge.

[96] An out-of-court statement, including a statement made in intercepted private communications, which is admitted for the truth of its content is hearsay. An out-of-court statement offered only as proof that the statement was made is not hearsay, and is admissible as long as it has some probative value. (*R. v. Evans*, [1993] S.C.J. No. 115, paragraph 16)

[97] Hearsay is objectionable because it is understood to be unreliable and untrustworthy. The Supreme Court of Canada explained this in *R. v. Khelawon*, [2006] S.C.J. No. 57:

...the central reason for the presumptive exclusion of hearsay statements is the general inability to test their reliability. Without the maker of the statement in court, it may be impossible to inquire into that person's perception, memory, narration or sincerity. ...the rule against hearsay is intended to enhance the accuracy of the court's findings of fact, not impede its truth-seeking function. However, the extent to which hearsay evidence will present difficulties in assessing its worth obviously varies with the context. In some circumstances, the evidence presents minimal dangers and its *exclusion*, rather than its admission, would impede accurate fact finding...When it is necessary to resort to evidence in this form, a hearsay statement may be admitted if, because of the way in which it

came about, its contents are trustworthy, or if circumstances permit the ultimate trier of fact to sufficiently assess its worth. If the proponent of the evidence cannot meet the twin criteria of necessity and reliability, the general exclusionary rule prevails. (*Khelawon*, paragraph 2)

A Principled Analysis -- Necessity and Reliability

[98] Intercepted private communications are routinely admitted into evidence notwithstanding that they constitute hearsay. (*R. v. Eiswerth*, [1998] S.J. No. 798 (Sask. Q.B.), paragraphs 12-15; *R. v. Violette*, [2008] B.C.J. No. 2781 (S.C.), paragraph 10; *R. v. Wu*, [2010] A.J. No. 1327 (C.A.); *R. v. Shea*, [2011] N.S.J. No. 653 (C.A.), paragraphs 54-57, 66-67, 74, 80-83) In many cases, intercepted communications will be admissible as admissions, a recognized exception to the hearsay rule. Admissions "in the broad sense refer to any statement made by a declarant and tendered as evidence at trial by the opposing party." (*R. v. Violette*, [2008] B.C.J. No. 2781 (S.C.), paragraph 63) Statements made or adopted by an accused in an intercepted communication are admissible against that accused person as evidence of the truth of their contents. (*Violette*, paragraph 65)

[99] The value of intercept evidence is incontrovertible. This was recognized by the British Columbia Court of Appeal in *R. v. Oliynyk*, [2008] B.C.J. No. 524 which saw fit to reproduce the trial judge's comments:

...The very high degree of reliability and the quality of spontaneous declarations that are contemporaneously recorded is recognized as a most significant part of the "necessity" rationale. There is no issue about whether the declarant's memory is accurate. The recording of the spontaneous and contemporaneous declarations is thus the best evidence. It is much better than that of a likely unreliable and uncooperative witness whose memory almost five years later at the trial of this case would not approach the accuracy of the *res gestae* like declarations. (paragraph 37)

[100] As stated in *Oliynyk*, intercepted communications provide "cogent and reliable" evidence about the targets and their activities. The communications are

highly probative, most significantly because "they largely emanate from the mouths of the accused themselves." (*Violette, paragraph 101*) The evidentiary value of intercepts has "enormous weight". (*R. v. Niemi, [2008] O.J. No. 4619 (S.C.J.), paragraph 29*)

[101] Part VI intercepts capture contemporaneous declarations by speakers who are unaware they are being listened to. They carry on their activities in blissful ignorance of the fact that their conversations are being recorded. Intercepts are high quality evidence that will assist in the truth-seeking function of the trial once the trier of fact determines what the conversations are about and what inferences can be drawn from the coded language being used.

PART V – *Circumstantial Evidence and the Drawing of Inferences*

The Law on Inferences

[102] For a conviction to be made out on circumstantial evidence, the Crown must satisfy the trier of fact beyond a reasonable doubt that the only rational inference to be drawn from the circumstantial evidence is that the accused is guilty. (*R. v. Griffin, [2009] S.C.J. No. 28, paragraph 33*)

[103] A reasonable doubt can be raised by the existence of any rational inference, drawn from an assessment of the whole of the evidence, that the accused is not guilty. It is the cumulative effect of the evidence as a whole that must be assessed. A trier of fact is not to evaluate pieces of evidence in isolation. (*R. v. Narwal, [2009] B.C.J. No. 1941 (C.A.), paragraph 88*)

[104] It is an error to apply the criminal standard of proof beyond a reasonable doubt to individual pieces of evidence. Facts "are not to be examined separately and in isolation to the criminal standard." The issue of whether the Crown has proven its case against the accused beyond a reasonable doubt must be determined on the evidence as a whole. (*R. v. Morin, [1988] S.C.J. No. 80, paragraphs 33 and 41*) As the Supreme Court of Canada held in *Morin*:

...the law lays down only one basis requirement: during the process of deliberation the jury or other trier of fact must consider the evidence as a whole and determine whether guilt is

established by the prosecution beyond a reasonable doubt. This of necessity requires that each element of the offence or issue be proved beyond a reasonable doubt. Beyond this injunction, it is for the trier of fact to determine how to proceed...(*Morin, paragraph 40*)

[105] Inferential reasoning is a necessary feature of a circumstantial case. An inference is a deduction from the evidence. Inferences are to be drawn from facts which have been proven. Drawing an inference involves a process of reasoning: "...a fact or a proposition sought to be establish[ed] is deduced as a logical consequence from other facts...already proved or admitted." (*R. v. Latif, [2004] O.J. No. 5891 (Ont. S.C.J.), paragraph 4*)

[106] There is a considerable difference between inference and speculation. "A trier of fact may draw factual inferences from the evidence. The inferences must, however, be ones which can be reasonably and logically drawn from a fact or group of facts established by the evidence. An inference which does not flow logically and reasonably from established facts cannot be made and is condemned as conjecture and speculation." (*R. v. Morrissey, [1995] O.J. No. 639(C.A.), paragraph 52*)

[107] The conclusions I reach must be "rational conclusions based on inferences drawn from proven facts." Conclusions not founded on the evidence are not rational conclusions. (*R. v. McIver, [1964] O.J. No. 835, paragraph 9 (QL version)*)

[108] I have been informed by these principles in my reasoning process in this case, and have applied them in my interpretation of the intercept evidence.

Evidence of Illegality

[109] The intercepted communications establish beyond a reasonable doubt that Kyle Shields was engaged in something illegal during the summer and early fall of 2011. The proof of it lies in Shields' own mouth, what he said in various intercepts that I will now discuss, and in the overall character of the many intercepted conversations in which he participated, a number of which I will be reviewing later in these reasons.

[110] It is obvious from the intercepts that Kyle Shields was involved in transactions with a number of people, including, John Field, Ryan MacInnis, Suzanne Davidson, “Bridgewater” Pat, and others. Kyle Shields, and “Bridgewater” Pat when he came on the scene, and everyone else used heavily guarded language throughout their discussions. Substances that were the subject of guarded conversations were never mentioned by name. Arrangements for meetings were made using generalized references that were readily understood by the participants. This contrasted with calls where references to some locations were made using very specific, identifying terms. The guarded conversations also clearly employed the use of coded language which I will be discussing more fully.

[111] Certain intercepted calls can be viewed in only one light - as calls about activities that were illegal.

September 5 – Kyle Shields and Ryan MacInnis

[112] Kyle Shields had a very telling telephone conversation with Ryan MacInnis on September 5, 2011. (*Session 2014*) Ryan MacInnis’ residence in Prospect had been searched by police on August 30. Police seized cannabis marijuana plants, some ziplock-bagged marijuana (17.32 grams unbagged, also two baggies containing 2.12 and 1.34 grams respectively), cocaine (37.66 grams bagged), hydromorphone pills, and steroids – all controlled substances. MacInnis was arrested.

[113] By the September 5 conversation, MacInnis was using a new phone number which he had supplied to Shields on September 1. (*Session 8411*) Shields knew MacInnis has been raided and the conversation eventually turned to this issue.

[114] Shields observed that MacInnis had become “comfortable”, implying that he had not been as careful as he should have been. He went on to say, “You got that at your neighbours or at your old man’s or somewhere, buddy, you sit there and laugh at them...” I infer from this, and the context in which it was said, that Shields was referring to using a stash location. He said about himself: “...I don’t ever really have that much here layin’ around usually...” They talked about how in Shields’s case it would take a close friend going to the police to bring them to his door. He

said to MacInnis: "...the only way I am going to get tagged up like that is if...you wanna flip on me..."

[115] The conversation reveals how aware Shields was about the consequences of illegal activity which I infer to be drug dealing: he mentioned that people "are scared to go to jail..." as an explanation for why someone in jeopardy themselves might rat out their friends to the police. He told MacInnis he won't learn the identity of the informer from the disclosure: "If there was two people it'll be someone A and someone B...It'll be...you know, Informant A and Informant B..." He expressed confidence that MacInnis will get "two years and you'll be out in six months." He told MacInnis: "You'll go in...and you go to reception. You stay there 'til ya adjust to jail for a bit and literally for your crime__it's not a violent crime...If you don't fuck around you'll be out in six months tops."

[116] Shields warned MacInnis not to have people coming to his house. MacInnis agreed that he didn't need to deal with "no new people. I make enough money..." Shields said, "Exactly" although he indicated he was content to deal with someone who had been vouched for by the right person, "like you or my buddies Johnny Cash".

[117] The reference to "Johnny Cash" was a clear reference to John Field. Several of the intercepted calls between Shields and John Field reveal that Shields made a play on Field's name by calling him "Johnny Cash." The Crown has alleged that John Field was Kyle Shields' supplier. I will be addressing this in due course.

September 19 – Kyle Shields and Ryan MacInnis

[118] Another revealing call between Shields and MacInnis occurred on September 19. (*Session 10455*) It was a similar discussion to the one they had on September 5, (*Session 2014*). Shields reassured MacInnis that not only will it be a while before his case gets dealt with in court, he'll only do six to eight months of a two year sentence and "...you'll go to reception. You'll go right in the farm..." There was also talk about who MacInnis suspected was the "rat" and the fact that "it" was in plain sight. Shields had a dim view of anyone who would have ratted out MacInnis to the police, calling such people "cowards" who will "roll" on a friend "and have him go to jail for eight months and lose like fuckin' four grand."

[119] There was an emphasis in this call on maintaining what can only have been a business enterprise. As I just mentioned there was Shields noting that being done in by a “rat” can lead not only to a jail sentence but also to losing “four grand.” There was also what Shields said to MacInnis about the advantages of delay in his case: “...You’ll go right in the farm. And, by the time you even do that, it’ll be like a year from now. You probably won’t even go to jail until the end of next summer.” MacInnis intends to “push [his case] off till after the summer...” He’d rather spend the winter in jail and pay his lawyer the extra money for the case taking longer. Shields noted the obvious benefits of this plan, telling MacInnis: “The longer you stay out more money you can make...” “Yeah, exactly” was MacInnis’ response.

[120] In the September 19 call MacInnis was using a different phone again. He told Shields his lawyer told him his phone would be “wired for fuckin’ sound” and to be “very careful on your phone...” MacInnis explained that when he told the lawyer the police took his phone, the lawyer said it wouldn’t take them long “...to get that number...” Shields took all this in and was clear about how he deals with the risk of talking on the phone: “That’s why, that’s why I never ever. That’s why I never ever talk shit, bro. Never _____” And MacInnis replied: “Yeah. No, don’t say nothin’ on that phone at all.”

August 20 – Kyle Shields and Suzanne Davidson

[121] Evidence of the illegal nature of Shields’ business enterprise is also found in a telephone conversation he had on Saturday, August 20 with Suzanne Davidson. Davidson was not using her phone. She explained to Shields that she couldn’t talk on her phone which is why she has called on another number. The clear purpose for her call was to tell him about what has happened. She got into a “real bad car accident...a few days ago up in Truro.” Shields was unimpressed, asking her: “How the fuck did you pull that off?” She was arrested because she was drinking and tells Shields what we know from the evidence at this trial: “...they searched my car and...they found some shit.” (*Session 7248*)

[122] It is apparent Shields was distinctly unimpressed by Davidson’s news. He said to her: “Gimme a call tomorrow, but I dunno. From what you’re tellin’ me right now, like you’re, you’re being pretty careless, right?” Davidson emphasized

that she was going to give Shields what she had left and then she was going to pay him. He acknowledged her intentions but chided her again: "...you gotta be a little smarter, hun. You know what I mean?" He told her: "You put yourself in bad situations, right?"

[123] Davidson was concerned that "they" may come to search her house. She was obviously referring to the police. Something, referred to as "it", was not at her house. It was in a safe place because of Davidson's fears of a police raid. Shields did not think she was at risk for having her house searched. He agreed he could drive her "wherever" she needed to go when they meet up.

August 31 – Kyle Shields and ST

[124] Suzanne Davidson's car accident was not merely of passing interest to Shields. In a text on August 31 at 17:43:30 hours (*Session 8184*), he told ST: "Ya that sucks and she owes me a chunk." At 17:51:24 ST replied: "I figured that and someone told me cops found her stash in the car great huh that's prob why she wont answer anyone." (*Session 8190*)

[125] I find that the August 31 texts were about Davidson's car accident and arrest and indicate that these events had financial implications for Shields and others.

August 4 – Kyle Shields and JW

[126] On August 4, Shields expressed some concerns about the product he was handling. His concerns emerged in a telephone conversation with JW. (*Session 5163*) JW was getting something from Shields which Shields was not eager to hold on to for too long. He told JW: "I just don't wanna have it layin' around you know what I mean?"

[127] The fact that Shields did not want the product lying around suggests he wanted to limit how long he had it in his possession, no doubt because whatever it was, it was illegal to possess it.

The Only Rational Inference is Illegality

[128] The only rational inference that can be drawn from Kyle Shields' conversations with Ryan MacInnis on September 5 and 19, Suzanne Davidson on

August 20, and JW on August 4, is that they were talking about something that was illegal – illegal to possess and illegal to transact, a controlled substance. The content of the calls and what Shields said in the conversations and the August 31 text he sent (*Session 8184*) make this obvious.

[129] The evidence, most notably the intercepted communications, leaves me with no doubt that Kyle Shields was selling and, on occasion, as I will discuss in due course, transporting a controlled substance to other people.

[130] It is plausible that Shields may have been selling and transporting more than one type of commodity: certain of the calls suggest this and Sgt. Vail's evidence indicates that a controlled substances trafficker will often diversify, to expand his market and increase his profits.

[131] That being said, the Crown's case against Shields fails if there is a reasonable doubt that he was trafficking in cocaine but, it succeeds if that proof is established even if Shields may also have had a trade going in other substances.

[132] The Crown submits the key that unlocks the question of whether cocaine was a controlled substance being trafficked by Shields lies in the coded language of the intercepts. I will be discussing that in due course.

The Pieces of the Puzzle

[133] Crown and Defence both have likened this case to a puzzle with pieces that must be fitted together to create a picture of what Shields and Scott were involved in over the summer and early fall of 2011. The Defence submits that some of the pieces offered in evidence, notably certain intercepted conversations, either don't fit into the Crown theory of the case or are simply obscure and unfathomable. In the Defence submission, this is where reasonable doubt lies. It is the Crown's submission that even if I can't fit certain pieces of evidence into the puzzle, this does not undermine proof beyond a reasonable doubt. As long as a coherent picture of guilt emerges, a few missing or incompatible pieces don't matter. Ultimately, for the Crown's case to succeed, the coherent picture has to be a picture of trafficking in, and conspiracy to traffic in, cocaine and, considering the whole of the evidence, including the incongruous pieces, I must have no reasonable doubt about this.

[134] The Crown says there is a sticky web of evidence that binds Shields and Scott to the offences charged. In the Crown's submission, this web of evidence is comprised of indicia of trafficking in cocaine – the presence of a stash house, the nature and frequency of the re-supplying of purchasers, what Sgt. Vail called “re-upping”, the reasonable inferences that should be drawn from the intercepts, including the coded language used, that the conversations involved the cocaine versions of “stepping on” the product, “shorting”, and “fronting”, and the commonalities between the seized items from the various searches. I will examine this evidence with reference to the intercepts and while I appreciate there is an abundance of calls, it is unavoidable that I will have to reference some more than once.

The Value of Trusted Associates

[135] The fact that Shields enjoyed a warm and convivial relationship with a number of people whose communications with him were intercepted is, of course, proof of nothing in itself. It is consistent however with what Sgt. Vail testified is characteristic of drug trafficking and the role of trusted associates and clients in the drug distribution hierarchy. There is evidence of Shields' concern about dealing only with people he knows and this will be apparent from the intercepts I will be reviewing.

[136] The intercepts make it apparent that Shields had a particularly friendly relationship with John Field and was on very familiar terms with others, including Ryan MacInnis. What is notable is that calls to arrange meetings have a business not a socializing focus: any meetings at restaurants or bars are arranged for convenience because Shields is out for a meal or a drink.

The Stash House at 1980 St. Margaret's Bay Road

[137] No one has disputed that Apartment 12A at 1980 St. Margaret's Bay Road was a stash house. The Crown alleges that John Field used the apartment to stash his supply of drugs, including cocaine, and that he supplied cocaine from this off-site inventory to Kyle Shields for trafficking. Shields submits the evidence does not establish beyond a reasonable doubt that he was ever inside the apartment where the drugs were found.

[138] There is no evidence that Patrick Scott was in any way associated with 1980 St. Margaret's Bay Road.

The Search of Apartment 12A, 1980 St. Margaret's Bay Road

[139] Apartment 12A at 1980 St. Margaret's Bay Road was searched by police following John Field's arrest on October 11 at his home. Field's home in Timberlea was 1 to 1.5 kilometers from 1980 St. Margaret's Bay Road.

[140] One of the keys seized from Field when he was arrested opened the dead bolt to Apartment 12A. The area of primary interest to police was a closet in the apartment that contained a significant number of items suggestive of drug trafficking, and a locked safe.

[141] From Apartment 12A, police investigators seized drugs and drug-related items, including: a functional digital scale analyzed to have cocaine and caffeine residue, located in the closet (*Exhibit 4, Photographs 312 and 313*); a total of 4995 grams of marijuana contained in two black garbage bags – one with 8 vacuum bags filled with marijuana in the amounts of 504 grams, 450 grams, 446 grams, 440 grams, 449 grams, 450 grams, 447 grams, and 443 grams, and another black garbage bag containing 4 vacuum bags of marijuana; used and unused vacuum bags; a notebook with columns and numbers; packaging that included ziplock and vacuum bags; a hydraulic press located in the closet; different pieces of paper including what police believed to be a score sheet; a small black functional digital scale with residue of cocaine and caffeine (*Exhibit 4, Photograph 314*); a black functional digital scale, brand name "J scale" which tested positive for cocaine and caffeine residue (*Exhibit 4, Photograph 315*); 23 unopened 200 mg bottles – 100 tablets each - of caffeine pills, "Forever Fit"; a grinder, similar to a coffee grinder, and other items labeled by exhibit officers as "drug paraphernalia"; two address books primarily containing phone numbers; a "High Times" box and lid belonging to a digital scale that tested positive for cocaine and caffeine; loose marijuana in a ziplock and a Rubbermaid tub; and a Cusinart Spice and Nut grinder with white residue that was not sent for analysis (*Exhibit 4, Photographs 1038, 1039, and 1040*).

[142] The grinder and a large amount of packaged cocaine were found inside the safe which had to be drilled open. (*Exhibit 4, Photographs 1035, 1037*) Sgt. Vail observed that the grinder, which he examined, had white residue in it but no strong chemical smell associated with cocaine, which led to his opinion that the grinder had been used to pulverize caffeine tablets into a powder for use as an adulterating agent with the cocaine hydrochloride.

[143] The cocaine found in the safe consisted of: 42 grams of crack cocaine (*Exhibits 65 and 66*) - purity 64 percent; 134 grams of cocaine hydrochloride (*Exhibits 68 and 69*) – purity 66 percent; 105 grams of crack cocaine (*Exhibits 75 and 76*) - purity 66 percent, calculated as the base; 199 grams of cocaine hydrochloride (*Exhibits 78 and 79*) – purity 64 percent; 191 grams of cocaine hydrochloride (*Exhibits 81 and 82*) – purity 67 percent; 199 grams of cocaine hydrochloride (*Exhibits 84 and 85*) – purity 71 percent; 200 grams of cocaine hydrochloride (*Exhibits 87 and 88*) – purity 71 percent; 199 grams of cocaine hydrochloride (*Exhibits 90 and 91*) – purity 69 percent; and 200 grams of cocaine hydrochloride (*Exhibits 93 and 94*) – purity 65 percent.

[144] Twenty-six (26) grams of cocaine and caffeine were located in a baggie on the floor of the closet. (*Exhibits 97 and 98*) The cocaine was one percent.

[145] Some of the cocaine from the safe was lumpy and hard, some was powdery and as noted, crack cocaine was also found.

[146] It was Sgt. Vail's opinion that the seizures from 1980 St. Margaret's Bay Road were consistent with cocaine processing for commercial trafficking purposes: the seized exhibits were evidence of cocaine being received in larger amounts, "stepped on", and repackaged using the hydraulic press.

Kyle Shields and the Stash House

[147] Police surveillance puts Kyle Shields and John Field in close proximity to 1980 St. Margaret's Bay Road. I will reference instances of this below. Other examples are mentioned in the context of my discussing various intercepted communications for other purposes.

[148] On July 5, at 18:54 hours, Cst. Bob Gould, who was set up at 1982 St. Margaret's Bay Road, saw John Field's vehicle, a brown Nissan Maxima, license plate EVG 437, parked in back of this building. Cst. Gould went on foot and saw there was no one in the vehicle. The Nissan was still there at 19:43 hours. (Police witnesses variously described John Field's Nissan Maxima as "brown" or "beige".)

[149] At 20:00 hours, Cst. Gould observed Kyle Shields in his black convertible BMW, license plate EUK 333, driving on St. Margaret's Bay Road toward Timberlea, that is, away from Halifax and in the direction of the stash house.

[150] At 20:06 hours, Cst. Gould saw this same black BMW parked at 1982 St. Margaret's Bay Road. When Cst. Gould approached the vehicle on foot he saw it was unoccupied. He did not see Kyle Shields get out of the car or where he may have gone. At 20:21 hours, Cst. Gould saw Kyle Shields driving his BMW, leaving the parking lot and heading toward Lakeside. He did not note anyone else in the vehicle with Shields. At 20:22 hours, Cst. Gould saw John Field's vehicle leave 1982 St. Margaret's Bay Road and head in the opposite direction, toward Hubley.

[151] Cst. Gould identified Kyle Shields in court. He was familiar with Shields from conducting surveillance on him during Operation H-Timber.

[152] Cst. Skidmore also testified about being involved in surveillance on July 5 and recalled seeing Kyle Shields in a black BMW, License Number EUK 333, at the Beechville Irving at 19:57 hours. It was his recollection that Shields was there until 20:25 hours. He also identified Shields in court.

[153] Cst. Skidmore's evidence cannot be entirely correct. I do not know the exact proximity of the Beechville Irving to 1982 St. Margaret's Bay Road although they are fairly closely situated, but at 20:00 hours, a time when Cst. Skidmore testified Shields was parked at the Beechville Irving, Cst. Gould observed him driving on St. Margaret's Bay Road toward Timberlea.

[154] I find that Cst. Gould's observations made while he was at 1982 St. Margaret's Bay Road are to be preferred over what Cst. Skidmore recalls and establish that on July 5, for a time in the evening, vehicles that John Field and Kyle Shields had been driving were parked there. Field and Shields were nowhere to be

seen. The only reasonable inference is that they went into the building where there was an apartment to which Field had a key.

[155] On July 21 at 18:49 hours, Cst. Gould observed Shields' Jetta was on Highway 3, heading to Lakeside, returning to Halifax. It had just left 1982 St. Margaret's Bay Road. Cst. Gould observed a male driver and a female passenger. At 18:53 hours, the Jetta turned left into Bayers Lake and at 18:57 hours, Shields had pulled into Eastside Billiards and walked inside. Photographic evidence (*Exhibit 4, Photograph 1076*) establishes that Kyle Shields was driving a silver Jetta on July 21.

[156] Throughout the intercepts there are references by Shields and Field to meeting up somewhere that is not specifically described or identified. For example, on July 26, at 16:37:50 hours, Shields was on the phone to John Field telling him he is "Just gonna come out there to see you" (*Session 4022*) "Out there" cannot be inferred to mean Field's residence as Field tells Shields he is waiting for his wife to get back and then he can "head out." He doesn't expect that will be long, probably about half an hour. I infer that once his wife got home Field planned to head out and meet up with Shields.

[157] By 18:57:57 hours on July 26, Shields and Field have still not met up. Field calls Shield's mobile and someone answers who is not Kyle Shields. The voice is different. He tells Field that "he" is in the bathroom. When "he" takes the phone it is unmistakably Kyle Shields. (*Session 1128*)

[158] Shields had stopped off to get something to eat. He tells Field he has eaten and Field says he will meet Shields there "in fifteen." "There" is not identified.

[159] Almost immediately after the conversation with Field, at 19:00:52 hours, Shields texts JW to suggest they meet at the Irving on St. Margaret's Bay Road in 25 minutes. (*Session 4067 and Session 4068 (19:01:16 hours)*) The only reasonable inference is that wherever Shields was meeting Field, it was close to the Irving on St. Margaret's Bay Road.

[160] On a number of occasions when Shields wanted to meet up with Field, Field told him he was waiting for his wife to get home. I already mentioned one example of this. Another example occurred on July 25: at 13:59:35 hours. Shields called

John Field (*Session 1073*) and after some gossiping about someone they know who is a fugitive, Shields indicates he is going to “Jack Astor’s to eat right quick” after which he tells Field “I might wanna come bump into ya”. Field mentions that “she gets in around three thirty...” an obvious reference to his wife’s return from work which is what is typically required to liberate Field from responsibilities at home. I infer from John Field mentioning this to Shields that he couldn’t leave the house until his wife was back. If he and Shields were going to meet at Field’s home, he wouldn’t have needed to wait on his wife’s return. The only reasonable inference is that Field and Shields would be meeting somewhere else which could not be accomplished as long as Field was at home minding his children. (The intercepts make it plain that Field had domestic responsibilities while his wife worked outside the home.)

[161] A conversation between Shields and Field on August 1 can only have referred to a meeting at a location both of them were familiar with. And in the context of Shields wanting to “hook up” with Field “for MB ” (*Session 1350*), the location had to have been the stash house. At 18:00:03 hours on August 1 (*Session 1353*), Kyle Shields was on his way to see Field, “almost on the highway here” and maybe twenty minutes away, an obvious reference to the time he expected to take before he got there. Field registered this information and told Shields, “Okay, man, I’m leavin’ my house in ten minutes, then.” Clearly, Shields and Field were not meeting at Field’s house but instead, somewhere close by.

[162] At 13:53:46 hours on August 4, Kyle Shields and John Field were on the telephone (*Session 5156*) while Field was at home minding his children. His wife was at work. Shields says he may “stop up” and suggests he could watch the children “for like a minute or something”, wondering if it would be “okay” if he did that. This suggests an arrangement that would have enabled Field to leave the house to go somewhere.

[163] On August 5 there was another intercepted communication that makes it obvious Shields and Field meet at an undisclosed location to re-supply. That evening Shields had to revise the time for meeting with Suzanne Davidson in relation to when John Field was available. Anxious for their meeting to occur,

Davidson asked where he had to go and Shields replied: “Well I gotta go see him and then just...it’s a little farther away, right. It’d be eleven.” (*Session 5367*)

[164] On August 9, at 20:38:13 hours, Shields had a telephone conversation with John Field. (*Session 1657*) He suggested meeting up with Field and asked, “do ya want to just meet me at buddy’s?” Field emphasized that he is at “The Mug” and tells Shields to meet him there.

[165] At 20:44:17 hours, Shields called Field. (*Session 1659*) He asked if Field wanted to go “up to buddy’s?” and told him he was outside the Mug parked by Field’s car. Field says he will come out. The only reasonable inference is that meeting “at buddy’s” is a guarded reference to meeting at the stash house.

[166] Police surveillance on September 21 identified Shields’ black BMW and Field’s beige Nissan parked outside the stash location. Earlier, at 13:47:02 hours, Shields was on the telephone with John Field, hoping he could see him. (*Session 3280*) The timing won’t work for Field who indicates he will be unavailable until later in the afternoon when his wife – [“...”] – gets home. Field says he will call Shields “by four thirty.”

[167] At 16:17:47 hours, Shields was still waiting on John Field. In their call (*Session 10585*), Shields wanted to know “...are ya’s doin’ this on purpose to me?” He was waiting for Field in Bayers Lake. Field tells him he will be “twenty minutes”, a clear reference to time.

[168] At 16:40 hours on September 21, Cst. Manning saw Kyle Shields’ car heading toward Timberlea, which was of interest as it was going in the direction of 1980 St. Margaret’s Bay Road. Cst. Manning recognized Shields as he drove by. At this point in the investigation he had seen Shields a lot and was readily able to recognize him.

[169] On September 21, at 16:44 hours, Cst. Mitchell observed a black BMW with a soft top parked at 1980 St. Margaret’s Bay Road. He also saw a beige Nissan parked there too. He believed these to be Shields’ and Field’s vehicles. Notwithstanding that no plate numbers were taken, I am satisfied, based on Cst. Manning’s observation of Kyle Shields and the intercepted communications between Shields and Field, that these were their vehicles.

[170] The vehicles were empty. There is nothing to indicate how long they had been there although I note that it cannot have been long as Cst. Manning had seen Kyle Shields driving at 16:40 hours.

[171] The importance of a stash location to Shields is evident from his comment to Ryan MacInnis after MacInnis' August 30 arrest. In the call with MacInnis about being busted (*Session 8267, September 1*), Shields sounded frustrated and told MacInnis: “___you don't fuckin' shit where ya eat. I'll talk to ya when you get here you fuckin' dummy.” I infer that Shields was commenting on the inadvisability of keeping illegal substances on site which indicates to me he appreciated the importance of using a stash location. Shields made the same point to Ryan MacInnis on September 5 in Session 2014, telling him: “You got that at your neighbour's or at your old man's or somewhere, buddy, you sit there and laugh at them.”

Exhibit 10 – the Nissan Maxima Tracking Log

[172] As I have just discussed, the surveillance and intercept evidence establishes that Kyle Shields was at the stash location with John Field on a number of occasions. The Crown also tendered the tracking log for John Field's Nissan Maxima (*Exhibit 10*). I found this evidence to be of minimal assistance. It provided only a very limited foundation for drawing inferences in relation to Kyle Shields. However where I was unable to square it with the intercept evidence it did not cast any doubt on the calls and texts that are the heart of the Crown's case.

[173] The Nissan tracking logs run from September 1, 2011 to October 11, 2011. I have examined them with the following established facts in mind: John Field also drove a BMW and his wife worked outside the home. It was apparent to me from the tracking logs that on occasion Ms. Field had the Nissan. The surveillance also confirms that there were days when John Field was driving the BMW.

[174] I am also not sure how reliable the tracker evidence is. For example, I note that the September 13 entries include the following notation: “Issues with tracker, seems as though vehicle went to Timberlea after above point.”

[175] Where the tracker log evidence does not appear to line up with the surveillance evidence, I view the surveillance evidence to be more reliable. For

example, as I noted earlier, on September 21 at 16:44 hours Cst. Mitchell observed what he believed to be Kyle Shields' black BMW and John Field's beige Nissan parked at 1980 St. Margaret's Bay Road. This would be 20:44 hours in tracker log (UTC) time. The tracker log notes Field's Nissan to have been at 1980/1982 St. Margaret's Bay Road on September 21 from 19:39 to 20:03 hours and again from 20:55 to 22:15 hours. According to the tracker log the Nissan was at John Field's residence at 20:44 hours. (The notation is "20:07 – 20:46 UTC at 180 Charles Road, Timberlea.)

[176] Another example is from Saturday, September 10, 2011. As I will be mentioning again shortly, at 17:47 hours on September 10 (*Session 2820*), Kyle Shields called John Field and they agreed to meet "there" in half an hour. At the time of the call, Field was at home. Yet the tracker log shows the Nissan to have been at 1980/1982 St. Margaret's Bay Road between 17:05 and 18:17 hours (21:05 – 22:17 UTC) Obviously John Field could not have been at home and at 1980/1982 St. Margaret's Bay Road at the same time. There is nothing to indicate that John Field was lying to Shields about his whereabouts on this occasion or any other. The time of the call by Shields and the content of the tracker log do not match up. I am wholly satisfied that the intercept evidence is to be preferred where there is inconsistency with the tracker log data.

[177] I have also been unable to square the tracker log data with the intercepted communications for October 6. The tracker log shows Field's Nissan was at 1980/1982 St. Margaret's Bay Road on two occasions on October 6 – 15:11 to 16:55 hours and 18:28 to 18:48 hours. It doesn't show the Nissan going back to the stash house address later, which is what I infer Shields wanted Field to do once they had rendezvoused at Eastside Billiards. (This is discussed at paragraphs 388 to 390 of these reasons.) I cannot explain this but I have no doubt about the accuracy and reliability of the intercepts and I am satisfied the only reasonable inference is the one I have drawn and will be discussing in more detail, that Shields met Field and went to the stash house in order to get re-supplied for subsequent distribution.

[178] In conclusion on the issue of whether it can be inferred from the evidence I accept, the intercept evidence and the surveillance, that Kyle Shields went regularly with John Field into the stash house at 1980/1982 St. Margaret's Bay

Road, I find that it can. Oblique references throughout the intercepts to “buddy’s” and “there” and similarly vague terms can only have been references to the stash house. Arrangements for meetings between Shields and Field that occurred at public places or Shields’ home were consistently discussed in explicit terms, in contrast to the guarded language used for the stash house location.

The Practice and Mechanics of Re-Supplying

[179] As I have indicated, the intercepts make it clear that Shields was supplying clients with a controlled substance. The Crown alleges he was a mid-level trafficker in cocaine. I will later address the issue of whether the Crown has proven beyond a reasonable doubt that Kyle Shields was dealing in cocaine.

[180] Kyle Shields dealt in a product or products much sought after by a number of people, including some I have mentioned already – Ryan MacInnis and Suzanne Davidson, and others – MB, JW, KD, RC, JB, CH, CM , and “Bridgewater” Pat. A consistent pattern was followed: Shields received a call or text placing an order and he followed this up by contacting John Field. He made arrangements to meet up with Field and, engaged in further communications with the earlier caller or callers.

June 30

[181] An example of this pattern emerges from calls and texts on June 30. At 17:14 hours. Ryan MacInnis called Kyle Shields’ mobile - 802 5449 - and left him a message to call (*Session 64*). Following that call, between 18:44 hours and 19:09 hours, there are text messages between Ryan MacInnis and Shields. The upshot of these messages is that MacInnis wants to see Shields who advises him: “I gotta c buddy 1st.” (*Session 97*) MacInnis asks at 19:09 hours (*Session 100*) if “U want me to meet u in eastsides for a beer on ur way there.”

[182] Before responding to MacInnis, Shields called John Field on his mobile - 209 9792 - (*Session 45*) at 19:10 hours. In this call, Shields tells Field he recalls that he is leaving the next day. He proposes coming to meet Field right away and says he is “gonna leave my house like right now.”

[183] At 19:28 hours on June 30, Shields texted Ryan MacInnis and told him, “40 min eastside buddy” (*Session 108*).

[184] Intercepts and police surveillance on subsequent dates reveal that “eastside” is Eastside Billiards in Bayers Lake, a location near 1980 St. Margaret’s Bay Road.

July 7

[185] In early July 2011, Shields’ mobility was restricted by an ankle injury. This necessitated a revised approach to supplying customers and coordinating with John Field. This is revealed by the intercepts and police surveillance for July 7.

[186] On July 7 at 14:10 hours John Field called a number – [...] - subscribed to by E.S., [...] Sapphire Crescent, Lower Sackville. In response to his asking if “Kyle” was there, Kyle Shields responded by saying: “Hey, what’s up Cash? What you up to?” This play on John Field’s name is a feature of a number of calls with Shields.

[187] John Field indicated in this call (*Session 252*), as he would in subsequent ones, that he was at home with his children while his wife was at work. He told Shields, “Ah, I gotta wait ‘til she gets off ‘cause I got the kids.” Field is told by Shields that “MB wanted to hook up for, like twenty minutes, like...” Because of his ankle injury, Shields is unable to “come right now”. This is an injury that he describes in later calls as still disabling him.

[188] Shields’ injured ankle problem leads Field to say he will call back once “she” gets home. I infer from the call that once Field’s wife was home and able to assume responsibility for the children, Field will be available. As he says to Shields in the intercepted call, “Then we’ll figure out something.”

[189] At 14:45 hours, a call was made to E.S.’s number [...] from a number subscribed to MB 476 6576 (*Session 280*). MB asks if “Kyle” is around. Shields takes the phone. Almost exactly an hour earlier, before the phone call between Shields and John Field, there had been a call from MB to Shields (*Session 271*) I infer that Session 280 involves a status report from Shields. He tells MB that “he” is “just waitin’ for baby girl to get home and watch the kids.” This is an obvious reference to John Field waiting for his wife to get off work and liberate him from

his child-minding responsibilities. MB asks if Shields wants him “to go over after work...Or were you gonna go do that?” Shields tells MB he is unable to move given the state of his ankle. MB acknowledges what he’ll have to do: “...all right, all right. So I’ll go over after work.”

[190] MB asked Shields for a phone number and was given John Field’s mobile - 209 9792. I infer that MB was going to call John Field directly.

[191] In Sgt. Vail’s opinion the willingness of Shields to give John Field’s number to MB speaks to the trust that existed between Shields and MB. He testified that this shows that Shields was comfortable with having MB meet his supplier “in exigent circumstances.” It is also indicates to me that Shields knew John Field would be comfortable dealing with MB directly.

[192] The call between MB and Shields, Session 280, lasted until approximately 14:51 hours. Very shortly after that MB called John Field. Ultimately MB and Field made arrangements to meet. (*Session 262*) In the meantime Field had been at [...] Sapphire Crescent (*Session 261, 17:04:10 hours*) which was confirmed by police surveillance.

[193] On July 7, 2011, Cst. Scott Manning had information from the monitor room that Kyle Shields was to meet with “a bunch of people.” He drove by where Shields lived at [...] Sapphire Crescent and at 14:39 hours he recognized Shields standing outside the house, facing him.

[194] Later in the day, Cst. Manning saw John Field’s brown Nissan Maxima at [...] Sapphire Crescent with no one in it. He testified that he had no idea how long the car had been there.

[195] At 17:09 hours, Cst. Manning called out the Nissan’s license number – EVG 437 Nova Scotia – to the surveillance team. At 17:13 hours, Cst. Manning, who was parked on Smokey Drive, saw that same Nissan drive by him and he recognized John Field as the driver.

July 11

[196] On July 11 between 17:18 hours and 18:36 hours, Kyle Shields and JW (using a phone subscribed to Melissa Comeau but, according to Cst. Aaron

Skidmore, used by JW), exchanged 8 text messages. (*Sessions 1631, 1640, 1642, 1643, 1645, 1648, 1649, and 1652*) The parties communicating obviously knew each other and had had a recent conversation: Shields wants to know if JW wants to “hook up”. (*Session 1640*) JW wants “the usual”, “30 min”. (*Sessions 1642, 1643, 1645*)

[197] At 18:38:42 hours, Shields called John Field (*Session 452*). In the call to Field, Shields wants to know if he can “hook up” with him. He wonders if Field can “come out here” because his “buddy” wants some product but Shields’ ankle is still disabling him. He needs to tell his “buddy” to “drop out here right whenever” which leads Field to say he will call back “in about twenty minutes”. This call ends at about 18:39:48 hours. Shields was obviously looking to John Field to get JW’s order filled.

[198] Shields texts JW at 18:45:04 hours and tells him, “He’s calling me back in 15 min” (*Session 1658*)

[199] At 19:10:39 hours, Field does call back as expected. He tells Shields he just sent him a text on his BBM network, saying: “I didn’t know I was just about to see ya.” He says Shields should “tell him to come.” (*Session 456*)

[200] The call from Field to Shields took 40 seconds and ended at 19:11:19 hours. Immediately after the call with Field concluded, Shields texted JW to tell him to come to his place. (*Session 1673*) A couple of minutes later, JW replied by texting, “K”. (*Session 1678*)

[201] These calls and texts between JW , Shields and Field can only be interpreted as the arrangements for the delivery of the product that JW was seeking, a delivery that Field had to make because Shields could not get around. Consequently JW was instructed to come to Shields’ house where Field was also expected. Field understood he would have to go to Shields; as he said in Session 456, “I didn’t know I was just about to see ya.”

[202] On July 11, Cst. Skidmore had reason to believe there was going to be a “meet” at [...] Sapphire Crescent in Lower Sackville, Kyle Shields’ residence. He set up with a view of the street in front of the house but not of the house itself.

[203] A gold Avalanche arrived. Cst. Skidmore observed that its occupant was carrying what appeared to be fast food and a drink. The gold Avalanche driver was at [...] Sapphire Crescent for only a minute, arriving at 20:10 hours and leaving at 20:11 hours.

[204] Eight minutes before the arrival of the gold Avalanche, at 20:02 hours, a brown Nissan pulled up in front of [...] Sapphire Crescent. Cst. Skidmore could not identify the driver as he was too distant. The Nissan driver left at the same time as the Avalanche driver, at 20:11 hours.

[205] I find that Cst. Skidmore's observations were observations of JW briefly attending at Kyle Shields' residence to collect the product that Field had brought. This is the only reasonable inference to be drawn from the evidence of the intercepts and the surveillance. It is not reasonable to infer that JW and Field did not follow through with the arrangements and that, coincidentally, another brown Nissan just happened to be at [...] Sapphire Crescent. There are no subsequent intercepts, as there are in other instances, to indicate that the product delivery arrangements fell through.

July 13

[206] On July 13, Shields called Field about "hooking up" which I infer from the many calls that use this terminology, means that Shields wanted to meet Field. Again, Field's availability is dependent on when his wife gets home around 3:30 p.m. Shields' client on July 13 is KD who had left him a message: "Tryin' to get my day started early, bro...seein' what's good." He wanted a call back. (*Session 1944*) Subsequently Shields is in touch with Field (*Session 1960*) proposing to "stop out", although Field needs to call him back as he has to go and see his mother. (*Session 1960*) Texts between Shields and KD in the period of 17:45 hours and 17:53 hours support the inference that a meeting is about to happen once the parties clarify where they are meeting. (*These texting sessions are Sessions 2037, 2038, 2039, 2052, 2053, 2056, 2057, 2058, 2059, 2060, 2061, and 2062.*)

July 16

[207] By July 16, JW wanted to meet up with Shields again. He was looking for more product. He suggested meeting up later in the day. (*Session 2741*) Following this, Shields also had a conversation with MB. (*Session 2745*)

[208] Shields told MB he had to attend his cousin's wedding that day "soon" but that he was "just waitin' to hear from buddy." He needed "to see him first anyway" and MB suggested, "Well, see him for me too then." The call ended with MB telling Shields to "get on the ball" and give him "a shout back here in a bit."

[209] Shields did call MB back. At 12:03 hours, he told MB to meet him at his house in twenty minutes. (*Session 2747*) MB agreed to this.

[210] Kyle Shields and JW resumed communicating later in the day on July 16. At 16:52:51 hours, JW texted Shields to inquire if he is going to come to Halifax. (*Session 2761*) Shields didn't respond until 17:36:25 hours, advising that he was in Fairview and asking when JW will be ready. (*Session 2762*) JW texts that he is ready "now" (*Session 2763*) and Shields replies: "1 sec" (*Session 2764*) This text goes out at 17:38:02 hours and at 17:38:16 hours, Shields is calling John Field. (*Session 2765*)

[211] Shields made the call to Field from the Fairview Legion. He wants Field to come to the Legion "with that." Field is getting his hair cut and can probably make it by 6:30 p.m. He is given directions for the Legion. He tells Shields that he will meet him "outside" at 6:30 p.m.

[212] Right after this call, Shields texted JW and instructed him; "Fairview legion on main street 630 sharp" (*Session 2766*) At 18:22:57, JW was texting Shields to advise: "Here" (*Session 2771*)

[213] I infer from these intercepted communications that on July 16 MB and JW were successfully resupplied by Shields with the help of John Field. There are no subsequent intercepted communications to indicate something went awry. And a later intercepted communication with Ryan MacInnis indicates that Shields is "in product" and can supply him too. (*Session 2791*)

[214] About an hour after the final exchange with JW, at 19:35 hours, Shields got a call from Ryan MacInnis. (*Session 2791*) Shields is at his cousin's wedding

reception. MacInnis tells Shields he will probably have to “bump” into him after the reception. Shields is ready for him because he “went and did somethin’ earlier...” He tells MacInnis to give him a call in a couple of hours and they can “hook up.”

[215] A text exchange from MacInnis to Shields at 21:33 hours elicited a reply that Shields is now home. (*Sessions 2796 and 2797*) MacInnis will be there “in 45”. It is 21:42 hours. Shields responded by texting: “Hurry up buddy” (*Sessions 2798 and 2799*) I infer that MacInnis also got re-stocked.

July 21

[216] On July 21, Suzanne Davidson was looking for “more than usual” (*Session 3255 text*). At 17:44:21 hours, Shields told her he was: “Just waiting for buddy to call back” and then he was going to meet him. (*Session 3261*) At 17:52:24 hours, Shields calls Field and they arrange to meet in fifteen to twenty minutes. (*Session 3265*) Shields lets Davidson know he is leaving “to meet him now...” (*Session 3266*) He sends a similar text to JW: “Going to see him now” (*Session 3267*) JW had been in touch some hours earlier, interested in seeing Shields around 6 p.m. (*Session 3210*)

[217] Between 18:07:26 hours and 18:36:39 hours, Suzanne Davidson and Shields sorted out that Shields would go to Davidson (*Sessions 3275, 3277, 3279*) although she identified a problem when she realized, as she said in a text at 18:36:02 hours, that “I have to go to the bank for u” (*Session 3281*) At 18:36:39 hours Davidson wondered how long Shields would be “or can I bring it to u tomorrow” she texted. (*Session 3282*)

[218] At 19:20:40 hours, Shields texted Davidson to advise: “Am here in my jetta” (*Session 3303*)

[219] In this same early evening timeframe, Kyle Shields was also engaged in texts with RC ([...], subscriber RC). Using a phrasing typical of a number of the intercepted communications in this case, RC wants to “run into” Shields at some point. (*Session 3245*) At 19:20:21 hours, Shields was telling RC by text “Block buster 20 min” (*Session 3302*)

[220] Police surveillance on July 21 observed Kyle Shields at Eastside Billiards with JW, at the Kearney Lake Liquor Store with Suzanne Davidson, and at the Blockbuster Video store on Sackville Drive with RC .

[221] On July 21, intercepts led Operation Timber investigators to believe there was going to be a “meet” at Eastside Billiards in the Bayers Lake Industrial Park. Surveillance was set up at 18:57 hours. Earlier, before these “meets”, Cst. Gould had observed Kyle Shields at 18:18 hours driving in his Jetta, license number EHM 521, on Highway 102, passing Bedford. At 18:49 hours, Shields’ Jetta was on Highway 3, heading to Lakeside, returning to Halifax. It had just left 1982 St. Margaret’s Bay Road. Cst. Gould observed a male driver and a female passenger. At 18:53 hours, the Jetta turned left into Bayers Lake and at 18:57 hours, Shields had pulled into Eastside Billiards and walked inside.

[222] Cst. Skidmore saw a person in coveralls leaving Eastside Billiards with Shields at 19:05 hours. Shields had gone inside, Coveralls went in shortly after and then they came out at the same time. They had been inside only about 8 minutes.

[223] Exhibit 4, Photograph 1069 shows Shields in the Eastside Billiards doorway. Subsequently Coveralls was identified as JW. This identification was made through the license plate EFF 546 (*Exhibit 4, Photograph 1075*) on the car JW drove off in. Cst. Skidmore then reviewed JW’s driver’s license photograph, confirming his identification.

[224] Exhibit 4, Photographs 1070 and 1071 are of Kyle Shields and JW leaving Eastside Billiards and going into the parking lot.

[225] Shields was back in his car at 19:07 hours, two minutes after leaving Eastside Billiards with JW. Cst. Skidmore then followed Shields to the Kearney Lake Road Liquor Commission.

[226] Shields was driving a four-door silver Jetta. (*Exhibit 4, Photograph 1076*) At the Kearney Lake Liquor Commission, a brown Dodge Neon pulled in next to where Shields was parked in his Jetta at 19:21 hours. The Neon parked next to him at 19:23 hours.

[227] Shields went out of sight behind the bushes. When the Neon left, Cst. Skidmore got a photograph of its license plate EFM 126 (*Exhibit 4, Photograph 1077, 1078*) From viewing photographs, Cst. Skidmore was subsequently able to identify the woman at the scene (*Exhibit 4, Photograph 1079*) as Suzanne Davidson.

[228] The rest of the surveillance team followed Shields when he left the Kearney Lake Road Liquor Commission and drove to the Blockbuster video store on Sackville Drive. Cst. Skidmore caught up to them after a brief hiatus and at 19:42 hours observed a grey Passat parked next to Shields' silver Jetta. (*Exhibit 4, Photograph 1080*)

[229] Investigators determined that the Passat was owned by RC.

[230] Cst. Skidmore shot some video at this location. Kyle Shields was captured coming out of Blockbuster with a dark-haired woman. He got into the Passat on the passenger side. Cst. Skidmore identified RC in the driver's seat.

[231] RC never got out of the Passat. Shields got out shortly after and got into the driver's side of his Jetta. The Passat left the parking lot and then Shields drove out.

[232] At 19:51 hours, Cst. Gould took a video of the meeting with RC, driving a Passat, at Blockbuster in Sackville.

[233] None of the police conducting surveillance on July 21 saw anything in Shields' hands or passed from Shields to JW, Davidson, or RC. However the only reasonable inference to be drawn from the intercepts and the surveillance is that Shields was re-supplying his customers after meeting with John Field beforehand to stock up on product. There is nothing to indicate that Shields' arrangements for the meetings with JW, Davidson, and RC went off the rails. None of these individuals, each of whom were interested in "hooking up" with Shields, were later intercepted to say the meeting had not taken place or had not led to each of them getting what they were looking for.

July 22

[234] The intercepts for July 22 indicate that Ryan MacInnis was looking to be re-supplied and that KD and JB were also looking for product.

[235] At 10:36:09 hours on July 22, in a text message to 802 5449, Ryan MacInnis wanted to know if Shields would be ready for him “tonight” (*Session 3367*) Upon learning he would be, MacInnis was satisfied and indicated he would see him “around 7” (*Sessions 3369 and 3372 – text messages*)

[236] Shields took orders from KD (*Sessions 3375, 3376 and 3377*) and JB. (*Sessions 3390 and 3396*) At 12:52:51 hours, Shields was making a call to KD who suggested they meet at the McDonald’s in Burnside. Shields was “on the road right now.” (*Session 3400*)

[237] It appears that by this time, Shields had already connected with John Field. In a call with Field at 13:34:39 hours (*Session 3409*), Shields said he “forgot to take that” but has to “hook up” with Field later anyway. He said to Field: “Gonna have to see ya again.”

[238] Shields re-supplied JB and MacInnis on July 22. In JB ’s case I find that Shields tried to facilitate the re-supplying by providing instructions to JB on where to find something at [...] Sapphire as Shields was not home (*Session 3440 at 16:06:47 hours*) – “Look, I’ll make it even easier for ya. Walk down the stairs. Ah, are ya in the house yet?” He says he will tell JB “right where it’s at.” Shields went on to say: “...there’s sixty minutes, that’s all I had layin’ around.”

[239] Resupplying Ryan MacInnis seemed to take Shields somewhat longer and was hard on MacInnis’ nerves.

[240] In a call with Shields at 21:02:44 hours (*Session 3493*) MacInnis indicated he was in Sackville and had been “at your house, you weren’t there”. Shields responded: “That’s no good, buddy. I gotta go meet up with buddy.” MacInnis wanted to “go talk to him”, asking “Can I go out there right quick?” MacInnis wanted things to happen more quickly: “How long ya gonna be?” he asked Shields.

[241] At 21:18:58 hours, Shields called MacInnis (*Session 3496*) Shields “just got home.” He is “just gonna call buddy and go, go grab that” MacInnis wants to meet up “around there...somewhere” and Shields suggests “probably around Bayers Lake somewhere” which, as I have said, is in the vicinity of the stash house.

[242] About 18 minutes later at 21:36:56 hours, Shields was on the phone to John Field (*Session 994*). Shields wanted to meet up with Field who was at home playing poker. Shields has “gotta do what we did the other day...” It is agreed they will meet in twenty minutes. This will be their second meeting that day, a meeting Shields had said in Session 3409 at 13:34 hours would have to happen.

[243] At 21:41:07 hours on July 22, Ryan MacInnis called Shields and wanted to know what is going on. (*Session 692*) Shields tells him he is “going to meet him right now, man.” MacInnis tells him he is stressing him out and asks if Shields wants to meet him first but Shields doesn’t. They agree they will meet at “Eastsides...where we always go for a drink” as MacInnis puts it. He wants to know: “How long you gonna be before ah, we go for a drink?” Shields tells him he will be twenty minutes.

[244] I infer that Shields had to meet with John Field whom he spoke to earlier before he could meet up with Ryan MacInnis and supply him with what he needed.

[245] At 22:42:43 hours, Shields called John Field and apologized for being late. (*Session 998*) He explained he was delayed and said he will be there “in a couple minutes.” At 23:13:31 hours, Shields called Ryan MacInnis to explain he’ll be with him in five minutes. (*Session 3515*)

July 25

[246] Suzanne Davidson was back in touch on July 25, a Monday. She texted Shields in the morning at 10:37:49 hours to ask what time she could stop by. (*Session 3713*) The answer, if there was one, is not in evidence.

July 26

[247] On July 26, 2011, Shields exchanged 8 texts with JW and one with KD. There were also three audio calls – two with John Field and one with JW.

[248] On July 26, JW was using 293 3951, a phone subscribed to him at 994 Ketch Harbour Road. Shields texted JW at 16:00:11 hours asking, “What time u sayin” (*Session 3978*) At this same time, KD texted Shields to ask if they could “hook up today?” (*Session 3979*) Any response is not in evidence.

[249] At 16:37:50 hours, Shields arranged to meet Field “out there”. (*Session 4022*) Shields followed this call up with a text to JW at 16:38:47 hours in which he told him he was meeting “buddy” in an hour. (*Session 4023*)

[250] JW texted Shields at 18:11:59 hours for a progress report. (*Session 4060*) Shields texted back at 18:13:07 hours that he had just left Sackville and was en route. (*Session 4061*) JW indicated by a text that he is “at Kent” (*Session 4063*)

[251] After a phone call with John Field at 18:57 hours (*Session 1128*) confirming he will meet Shields “there” in fifteen minutes, Shields arranged to meet JW at the St. Margaret’s Bay Irving. (*Sessions 4067 and 4069 (text)*)

[252] Shields was called by JW at 19:38:43 hours. (*Session 4083*) JW is complaining about waiting. Shields assured him he is on his way. I infer that Shields did meet with JW as promised as there are no intercepted communications to indicate he failed to do so. It is apparent from the calls JW made to Shields that he would not have hesitated to follow up if Shields had not appeared.

July 28

[253] Kyle Shields’ intercepted communications on July 28 clearly illustrate his re-supplying of Ryan MacInnis and Suzanne Davdison. MacInnis called Shields at 19:13:01 hours (*Session 4299*) to ask if he can “be ready” for him tonight. Shields was uncertain at first and was told it was important. That spurred Shields to say, “All right...I’ll gear it up.” He said he would call MacInnis back. At 19:21:40 hours, Shields called Field and wanted to know if he can “run into” him. (*Session 1191*)

[254] At 19:53:58 hours, Ryan MacInnis called Shields. (*Session 4305*) Shields was in Bayers Lake and just going to see “buddy”. The only reasonable inference is that “buddy” was John Field. Shields and MacInnis discuss where and when they are going to meet up. They settle on Sackville.

[255] MacInnis was coming through Burnside, referencing Windmill Road, which is in Dartmouth, when he had a conversation with Shields at 20:45:49. (*Session 4309*) Shields was on his way but not there yet, presumably home, and told MacInnis to give him twenty minutes. MacInnis says the delay is “killing” him and

Shields tells him he will explain. He tells MacInnis he will call him in five minutes.

[256] In the next call with MacInnis at 20:54:27 hours, Shields explained the delay. (*Session 4311*) Suzanne Davidson was also scheduled to stop by. It seems that she and MacInnis had had some kind of relationship causing Shields to think that MacInnis might not want to run into her. That, said Shields, was why he was telling MacInnis to wait.

[257] From the call it can be inferred that John Field was with Shields. His higher-pitched voice can be heard in the background at one point in the call. He was wanting to know a price for the deck MacInnis is working on for him. MacInnis tells Shields he will talk to Field too when he gets there. Presumably, “there” is [...] Sapphire Crescent.

[258] Suzanne Davidson is in the mix as a result of a text from Shields to her at 19:14:43 hours. (*Session 4301*) She is told Shields is going home soon and will message. At 20:13:58 hours, Shields called Davidson (*Session 4307*) to ask if she can leave “right now” to come to his house. He was getting ready “to get on the highway”, in other words, to head home.

[259] At 21:14:22 hours, Shields texted Davidson to tell her “Ryan stopped in for a quick second will that be weird” (*Session 4313*)

[260] Session 4313 confirms that MacInnis did go to Shields’ house as arranged and that Davidson was on her way. Again there are no intercepted communications to indicate that these meetings failed to occur. I find that they happened and that the purpose of Shields meeting with Field and then MacInnis and Davidson was to re-supply them with the product or products they were seeking.

August 1

[261] Resupplying is in evidence in August 2011 as well. On August 1, at 16:21:24 hours Shields talked to John Field on the phone. (*Session 1350*) Shields wanted to “hook up” with Field “for MB.” Field told him to “just give me a jingle” which Shields says he will do in “probably like an hour.” At 18:00 hours (*Session 1353*) they were making plans to meet up shortly.

[262] At 18:31:51 hours, Shields called MB. (*Session 4829*) He told MB he was just leaving “buddy’s”, was dropping someone off at “her Mum’s and then stoppin’ by.” This suited MB who responded: “For sure, buddy.”

August 4

[263] On August 4, Shields re-supplied KD. At 14:13:35 hours, Shields texted KD to tell him “1 hr buddy” (*Session 5159*) KD acknowledged this with a text in reply to Shields at 14:14:12 hours in which he said, “K buddy. dont forget me” (*Session 5160*)

[264] At 17:34:59 hours, Shields and KD had an audio conversation. (*Session 5196*) They arranged to meet on Millwood Drive. The conversation was guarded: after the meeting arrangements were made, KD said to Shields: “All right cool and that’s what I need to see you for so - cool?”

[265] Earlier that afternoon, prior to calling KD, Shields also spoke on the phone with JW . (*Session 5163*) He told JW that he was going out “to see buddy a little later on” and wanted to know if he should “grab yours too, or what?” They had a guarded discussion about what JW wanted Shields to do. It is apparent that before JW could take possession of whatever it is that Shields would be “grabbing” for him, he needed to “collect up a bunch of money.” JW asked if Shields can “grab it and just hold it?” Shields was accommodating. He said he will “grab it” and then JW can “come and get it today and then you know, when you get organized you can come and see me later.”

[266] A later call that Shields had with John Field at 17:38:15 hours (*Session 5200*) establishes that they had been together sometime earlier in the day, which was indicated in their call at 13:53:46 (*Session 5156*).

[267] Again there is nothing to suggest that after Shields met up with John Field he failed to meet with KD and JW as arranged.

August 5

[268] Shields was busy on August 5 with orders to fill from Suzanne Davidson and Ryan MacInnis. Between 13:51:30 hours and 14:09:10 hours, the texts between Shields and Davidson deal with when and where they will meet up.

Davidson seems to have a transportation problem (*Sessions 5269 and 5270*) and Shields agrees he can come to her. (*Session 5271*) She is happy with this and at 14:09:10 hours asks him to text when he is on his way. (*Session 5272*)

[269] At 15:26:18 hours Shields called Davidson to say he would be there in twenty minutes. (*Session 5275*)

[270] It is apparent from a subsequent call between Shields and Davidson that he met with her. (*Session 5307*) During this later call at 18:32:03 hours, Davidson placed another order and Shields confirmed it with a reference to his earlier re-supply run: “Yeah, bring what I already brought and then another ten minutes.”

[271] Shields was on the phone to John Field at 19:03:54 hours. (*Session 1484*) Shields told Field he needed to see him: “I’m gonna have to run into you in a little bit though”. Field has the children and is unavailable until after his wife gets home from bingo. He is expecting that to be around 9:30 to 10 p.m. and says he will call “as soon as she gets home.”

[272] It was right after this, at 19:10:47 hours, that Shields got a text from Ryan MacInnis. (*Session 5316*) He wants to see Shields that night. They have a telephone conversation at 19:21:08 hours. (*Session 5324*) Shields tells MacInnis he won’t be “ready” for him until 9:30 anyway which fits into MacInnis’ evening plans perfectly. Shields uses guarded language to describe where they will meet: “And I’ll just meet you somewhere where we normally meet.”

[273] In a call with Suzanne Davidson at 19:57:00 hours (*Session 5336*), Shields tells her he “just talked to buddy and I’m meetin’ him at nine thirty”. He expects to be at Davidson’s house “around like ten”. This overcomes the transportation problem Davidson indicated in *Sessions 5269 and 5270*.

[274] Meanwhile Ryan MacInnis has been waiting. He texts Shields at 20:58:40 hours (*Session 5346*) to ask what is happening and whether “we goin to east sides for a beer still what time u wanna go 9:30 like we planned” Shields acknowledges this (*Session 5347*) and then deals with texts from Davidson (*Sessions 5348 and 5349*).

[275] Shields arranges to meet with Ryan MacInnis at 10 (*Session 5354*) and tells Davidson at 21:05:20 hours he will be with her “10ish”. (*Session 5357*) He has to revise his meeting time with MacInnis, texting him at 21:19:19: “Ill be like 1030 1045” (*Session 5366*)

[276] Shields also has to revise his time with Davidson. He calls her at 21:19:29 hours (*Session 5367*) to advise that he just got off the phone with “buddy” and is meeting him a little later than he said: “I’m meeting him at ten so by the time I meet him and do whatever I might be ten thirty. It’ll be eleven at the latest.”

[277] It is plain that Shields was talking about John Field. When Davidson expressed anxiety about the delay Shields told her he would rather “do it right now if I could...but he’s watchin’ his kids, right.”

[278] At 22:03:47 hours, Shields called John Field and learned that his wife will be home imminently. (*Session 1491*) Shields says to call when she gets there.

[279] Ryan MacInnis texted Shields at 22:30:44 hours to say “I’m here now.” (*Session 5387*) He was presumably referring to Eastside Billiards where they had agreed to meet. At 23:10:22 hours Shields is at Davidson’s. (*Session 5396*) Thirteen seconds later he is on the phone with John Field. (*Session 1494*) He tells Field he is “just at her place” and they make arrangements that Shields will call when he’s “headin’ up there” and Field will meet him on the side of the highway.

[280] The agreed upon call happens at 23:31:20 hours. (*Session 5405*) Shields and Field are to meet up imminently.

[281] An earlier call with Suzanne Davidson makes it clear why Shields would go and meet with her prior to meeting Field: in Session 5294, Davidson proposed giving Shields the money “tomorrow”, a proposal Shields firmly rejects. No, he says, it has to be today.

August 9

[282] Suzanne Davidson wanted to be re-supplied on August 9. She texted Shields asking to see him. (*Session 5813*) She was fairly anxious: when she was told at 12:37:08 hours that Shields will be a couple of hours she asked if it would be quicker for her to come to him. (*Sessions 5828, 5834*) At 12:50:11 hours he tells

her “Nothing here hun.” (*Session 5835*) She responds by telling him to text “when ur good.” (*Session 5837*) Obviously at this time Shields was unable to re-stock Davidson.

[283] Between 16:57:49 hours and 17:48:42 hours, Shields and JW exchanged texts about meeting up. Shields wanted to know at 16:58:05 hours if JW wants to “do that tonight?” (*Session 5885*) JW responds at 16:58:10 hours that he has to go to the bank. (*Session 5586*)

[284] At 17:55:33 hours, Davidson was wondering in a text whether she can meet with Shields “for that now.” (*Session 5908*) They arrange by text and phone call where to meet, and have to revise their arrangements when Shields drives by the location. (*Session 5925*)

[285] Meanwhile JW has been waiting. He thinks maybe Shields is coming to him. (*Session 5944 – 19:34:25 hours*) But he isn’t. Shields texts back at 19:34:25 hours that he is in Bayers Lake eating and “then meeting buddy.” (*Session 5944*)

[286] Between 20:38:13 hours when Shields calls Field to say he is leaving Montana’s, a restaurant, and 20:46:46 hours when he calls JW, Shields has obviously met with Field and been re-supplied. He tells JW: “just got that for ya so I’m just in Bayers Lake.” (*Session 5972*) They arrange to meet.

August 12

[287] On August 12, Kyle Shields referenced his supply chain in a call with Field at 11:39:11 hours (*Session 6231*): “...I might just come see you now and have everythin’ ready for people and then call you to come out and come see me when I’m ready for you.” Field says he will call Shields once he has returned home from seeing someone.

[288] At 12:42:21 hours, Field and Shields spoke on the phone again. (*Session 1807*) Shields wanted Field to have “two things” ready for him and then he’ll meet up with Field and “we’ll do it all then, right.” When the timing didn’t look as though it would work, there was a discussion about the alternative of meeting the next day.

[289] Shields then engaged in text exchanges with Suzanne Davidson starting with her contacting him at 13:25:20 hours. (*Session 6276*) She indicated she is “coming back to truro for the 3 day concert and bunch of people want to bump into me down here.” Shields told her “later” and she subsequently wanted to know if they can “hook up before 5?” (*Sessions 6278 and 6280*)

[290] JW also wanted to connect with Shields. (*Sessions 6290, 6291, 6315, 6320*)

August 13

[291] August 13, 2011 was a Saturday. Shields was leaving the next morning on a trip. It made for a busy pre-departure day with the intercepted communications that Kyle Shields had with JW, RC, Suzanne Davidson, Ryan MacInnis, and John Field vividly illustrating the re-supplying arrangements.

[292] At 12:25:50 hours on August 13, Shields had a very jocular telephone conversation with JW. (*Session 6442*) Shields was just getting up. At the end of the conversation Shields wants to know where JW wants to meet him. JW says it would be better “if ya come down this way” so Shields says he will “go get it and then I’ll call ya.” JW indicates he will “grab the loot and have it on me then or somethin’” The only reasonable inference is that when they meet up JW will have the money and Shields will have the product.

[293] Shields’s next order of business was a call with John Field, arranging to meet him. (*Session 6447*) Field tells Shields, who is “already on the road” that he will meet him “down there in ‘bout ten minutes then.” Other calls, as I have indicated, and this one, cause me to infer that “down there” is the stash house.

[294] Texts exchanged by Shields and RC between 14:15:10 hours and 15:16:19 hours were focused on meeting up at some point. At 15:14:06 hours, Shields was “home”. (*Session 6475*) RC planned to meet him there. (*Sessions 6476 and 6478*)

[295] The plan to meet up with JW seemed to fall apart by 16:10:04 hours. (*Session 6494*) Shields was home but without a vehicle. Either JW would have to drive to Sackville or Shields would see him when he got back on Friday.

[296] At 18:12:15 hours, Shields and Suzanne Davidson had a telephone conversation. (*Session 6521*) Mindful of the possibility she would want to see him,

Shields had texted Davidson earlier. (*Session 6479*) Shields is now not at home, he's out having "a bite to eat." Davidson wants to come and see him. He tells her he is leaving for Toronto in the morning. She says she is going back to Truro "today."

[297] At 19:31:08 hours, JW texted Shields and advised he is on his way. (*Session 6523*) At 20:21:49 hours, JW is at Shields's house. (*Session 6544 – text*) There are no further communications on August 13 between Shields and JW in evidence. I infer that there was no reason for any further communications: their meeting achieved what they intended it to and JW was re-supplied.

[298] Shields and Field had a telephone conversation at 20:42:23 hours. (*Session 1521*) Shields was home and trying to get hold of Ryan MacInnis. Shields wanted to get Field "a big chunk" before he left on his trip in the morning. He has "three" at his house for Field to come and get if he wants; he'd like Field to have it because "it could get picked away at" in his absence. I infer that the discussion is about money and getting money from MacInnis to pay to Field along with what Shields has at the house.

[299] At 21:13:16 hours, Suzanne Davidson was heading for Truro and wanted to come by Shields's house. (*Session 6561*) He texted that he would probably be home (*Session 6562*) and confirmed that he had what she wanted to get from him. (*Sessions 6563 and 6564*) At 21:44:45 hours, Davidson called Shields to confirm he is at home. (*Session 6578*) She says she will be there "in about fifteen."

[300] Ryan MacInnis texted Shields at 21:24:30 hours. (*Session 6570*) He told him: "I'll hook up with u tmr I can just give to cash if u want up to u"

[301] A text in response indicates that is what Shields wanted MacInnis to do, "give it to cash" because he leaves in the morning. (*Session 6572*) This is an obvious reference to MacInnis giving what I infer to be money directly to John Field, referred to in the intercepts on occasion as "Cash."

[302] At the end of the day on August 13, I infer that Shields' customers for that day are all sorted out: RC, JW, and Davidson. And Shields also sorted out getting money to John Field, something that Ryan MacInnis could handily do in the circumstances.

August 14

[303] On August 14, intercepted BBM messaging between Shields and Field confirm that MacInnis did see Field and take him money. Using Ryan MacInnis' nickname, there was the following exchange: PIN #230b7844 (Shields) messaged PIN #23964853 (Field): "Mermal c u?" John Field (*PIN #23964853*) responded "Ya." Shields (*PIN # 230b7844*) replied: "Ok I just talked to him should have 45 for ya buddy and ill hit ya up when I'm back". From this I infer more money was to flow into Field's hands.

August 17

[304] Even though he was in Toronto, business was not far from Kyle Shields' mind. On Wednesday, August 17, at 14:04:48 hours, Shields and Field had a telephone conversation. (*Session 1988*) Shields was returning on Thursday night. He was dismayed to learn that Field would be leaving on Thursday morning because "I gotta see you." Shields was going to "need quite a bit" and he referred to "Murmel", that is Ryan MacInnis, "the other guy", and MB. I infer that money was what was being referenced when Shields asked if Field wanted him to give his mum "a big chunk? 'Cause I'll have like ten when I get back." Field says "just give it to her."

August 19

[305] Shields was back on home base on August 19. He managed a flurry of calls: three with CM, two with JB, two with Ryan MacInnis, and two with John Field.

[306] When Shields called Field around lunchtime, Field was on his way back from Moncton. (*Session 7165*) Field said he should be "ready by twelve. This "sounds good" to Shields.

[307] At 12:08:46 hours, Shields was on the phone with JB. (*Session 7170*) JB had been waiting to talk to him and places an order using guarded language. It is arranged that JB and Shields will have to meet in town as Shields needs "like a half hour...I'm goin' to meet him somewhere around Bayers Lake and then I got...an appointment to get a haircut in Halifax so you might have to just meet me in

Halifax, if you want.” JB who is presently in Sackville asks Shields if calling him in about an hour will work.

[308] Shields also had a call with Ryan MacInnis. This occurred at 12:12:19 hours. (*Session 7173*) Shields says he was hoping “to run into” MacInnis. MacInnis said he had “dropped it off with Johnny” to which Shields responds, but “that was last week though, wasn’t it?” Yes it was, MacInnis tells him, and “I’m not ready yet. I’ll probably be ready tomorrow.” Shields says: “No problem...just gimme a call.”

[309] It is reasonable to infer that what was “dropped off with Johnny” was the money that was discussed in the text from MacInnis to Shields on August 13, (*Session 6572*), just before Shields went away.

[310] At 12:18:31 hours, Shields called CM (*Session 7184*), who was about to leave town, to let him know “I’m just getting ready to go see buddy now and I’m late, I might be cuttin’ your time line close, though.” He wants to know if CM can “bend a little on your time, or no?” Shields thinks he’ll be ready in about a half hour. He can meet CM when he’s leaving “buddy’s meet ya in Bayers Lake or in town...?” CM wants Shields to call him and he’ll meet him “in Bayers Lake, whatever’s quickest.”

[311] At 12:24:29 hours, Shields got a call from John Field that he is home if he wants to drop by. (*Session 2052*)

[312] The two calls that followed from Shields were to CM at 12:35:59 hours (*Session 7194*) and to JB at 13:07:43 hours (*Session 7198*). Shields tells CM to meet him at the Wendy’s in Bayers Lake. He arranges to meet JB at the Subway on Spring Garden and advises that he’ll be there “in about fifteen minutes.” JB is on the highway passing Kearney Lake and Shields tells him “Yeah, so we’ll probably be making good time.” Shields was on the way to successfully filling two customer orders, although I infer that he was unable to do so until he could meet up with John Field, his supplier.

August 21

[313] The intercepted communications in evidence for August 21, 2011 are all between Kyle Shields and Ryan MacInnis. There were four texts and one telephone

call. They relate to Shields having product for MacInnis which he tells MacInnis he can come by and get. (*Session 7434*) At 19:33:53 hours, MacInnis texts Shields to tell him he is on his way. (*Session 7436*)

August 24

[314] Shields re-stocked on August 24. At 18:04:15 hours, Shields called Field and said he is probably going to “run out there.” (*Session 2272*) Field asks: “...did you still need me or are you cool right now?” They agree to meet later on. Shields says he will give Field a call. At 18:57:24 hours Shields calls Field. (*Session 7636*) He tells him he is “just gonna take a stop out right now. I’m just on Sackville Drive...I’ll be there in twenty minutes.”

[315] It might be suggested that the exchanges on August 24 between Shields and Field were innocuous and could have as easily been about meeting up for social purposes. However, I infer from Field asking Shields if he still needed him that the calls relate to the business they routinely transacted, a business that required Shields see Field to stock up on product before distributing it.

August 27

[316] On August 27, Shields’ intercepted communications indicate that “Bridgewater” Pat is looking to get re-supplied. Ryan MacInnis is part of this loop, initially acting as the intermediary for Shields with “Bridgewater” Pat. (*Session 7819*) I will be discussing “Bridgewater” Pat in Part VI of these reasons.

August 31

[317] On August 31, 2011 Shields re-supplied JB having met up with Field beforehand. At 16:48:11 hours, in a telephone conversation with JB (*Session 8165*), JB tells Shields he needs to see him. Shields wants to come and see him first but JB has to “run to the bank.” Shields is not too far away and they agree to meet there.

[318] About three-quarters of an hour later, at 17:29:22 hours (*Session 8182*) Shields and Field are on the ‘phone briefly. Shields wants to know if Field wants to “meet at buddy’s__for a sec?” He can be there in ten minutes if Field is going to be

there by then. That is agreed. I infer that in this conversation Shields and Field were setting up a meeting at the stash location.

[319] JB texted Shields at 17:45:38 hours (*Session 8187*), obviously looking for him. They arranged to meet in the Spring Garden Road area where Shields was at a bar. (*Sessions 8191, 8194, 8196*) Shields explains that when JB is out front he – Shields - will have to run to his car. JB calls when he is coming down Spring Garden Road and that he will be “out front in a minute.” (*Session 8196*)

[320] I infer that by the time Shields met up with JB on Spring Garden Road he had seen John Field and re-stocked and JB had gone to the bank to get the money he needed to pay Shields for the product being supplied.

September 2

[321] By September, the smoothly running re-supply chain that included Kyle Shields and Ryan MacInnis had been ticking over seamlessly all summer. It had to undergo some adjustments after Ryan MacInnis’ drug bust on August 30. This was discussed by Shields and MacInnis in a conversation on September 2 (*Session 8411, 18:38:41 hours*).

[322] It is apparent from the September 2 conversation that MacInnis believed the police search came about as a result of someone “ratting him out.” He describes himself as a “Fuckin’ heat bag is all I am right now.” In a very guarded conversation with Shields he talks about how he’s arranged things so he’s “outta sight...” He tells Shields: “...we got everythin’ all straightened away between everybody so that’s what’s gonna be happenin’ from now on. I’ll come see you with that and you just, he’ll come see ya. You know what I mean?” Shields responds that it “sounds good to me, buddy.”

[323] MacInnis advises Shields he has hidden his boat so the police can’t get their hands on it as “proceeds of crime”. He tells Shields: “I just figured they probably take that too.” He is prepared to hand it over to Shields to pay a debt if “it comes down to it...If I can’t afford to pay ya then...That’s yours, ya know what I’m sayin’...It’s fuckin’ worth money...” Shields is unfazed. He tells MacInnis: “...I’m sure we could always work somethin’ out right?”

[324] Sgt. Vail testified that the term “heat bag” is a universal term that indicates a person is attracting police attention. I find MacInnis was now a magnet for the police because of the police raid at his home and the consequent drug charges.

[325] Shields continued to re-supply on September 2. His customer was RC. RC wanted to “hook up” with him that night sometime. (*Session 8417, 19:29:40 hours – text*) At 20:00:33 hours, RC is hoping to “run into u in about an hour or so.” Shields acknowledges this at 20:02:11 hours. (*Session 8424*)

[326] Consistent with the established pattern, Shields called Field on September 2 at 20:56:02 hours (*Session 2582*) and in an obvious reference to the stash location, asked if he wants to meet “up at buddy’s in like fifteen minutes?”

[327] At 20:57:29 hours, RC texted Shields to ask if he can come by in 20 minutes. (*Session 8431*) Shields replied almost immediately by telling him to make it an hour. (*Session 8432*) I infer that Shields needed time to meet up with Field at the stash location. Shields and RC had a subsequent telephone conversation at 21:53:17 hours. (*Session 8439*)

[328] In their conversation, RC and Shields arrange to meet. Shields is in transit, “just comin’ to Sackville now” he tells RC. He can meet RC at the liquor store where he is or “wherever...I’m ready for ya right now, so wherever.” RC tells him he will be “in better standings with ya next week, but we’ll talk about that when you get here.”

September 5

[329] On September 5, intercepted BBM messaging indicates that Shields was re-supplying MB. I infer that MB had been selling product and I interpret his BBM message to Shields at 17:59:15 UTC as: “Haven’t done too much but got a g for ya.” (The message reads: Havnt done too much but go a g fry a.) Shields replies at 17:59:38 UTC: “Ya that helps man” A “g” would be a thousand dollars, the proceeds from MB’s sales of a product supplied by Shields.

[330] MB goes on to advise that he is just getting home and will “give u a shout after dinner” Shields indicates he “was gonna and stop up” but MB says he will “have to run to the bank first.” After some bantering back and forth, at

18:29:41UTC Shields tells MB: “Go to the bank I gotta c buddy” At 19:01:31UTC, Shields messages MB: “U ready chico?” MB wants to know where Shields is. Shields messages that he is “Home” (19:08:24 UTC)

[331] It is later that Shields proposes to meet John Field. In a BBM exchanges at 23:30:44 UTC Shields says “...u should take a stop out buddy.” Presumably he has money and Field can deliver product, or perhaps collect the money. While the exact nature of the transaction with Field is not clear, it is a transaction related to the re-supplying process and not a social overture.

September 9

[332] On September 9, Shields had calls and texts with Ryan MacInnis, RC, and JW. He also spoke three times on the telephone with John Field.

[333] Before Shields met anyone on September 9, he met up with John Field. I infer that their meeting was at the stash location. Shields had a call with Field at 13:44:21 hours. (*Session 2775*) He was trying to locate Field who tells him he is “here waitin’ for ya.” Shields is still unclear where to find him. Field tells him: “I’m here waitin’ for ya just down the street.” That seems to help Shields who says: “Oh, just at the regular place?” Field confirms this as correct.

[334] The inference that Shields was meeting with Field at the stash house is reinforced by his response to a text from JW. At 14:04:10 hours, Shields texted JW (*Session 9023*) to ask him: “Am with buddy u want me grab yours” JW does (*Session 9033, 14:19:46 hours - text*) and subsequently they arrange to meet. (*Session 9038*)

[335] Just before this at 14:09:09 hours Shields and RC arrange to meet at the Allegro Lounge in Bayers Lake. (*Session 9032*) Shields explains where this is located and RC tells him he will “head over right now.”

[336] Police surveillance confirms that the intended meetings between Shields and RC and JW do in fact occur.

[337] Intercepted communications indicated to investigators there was going to be a “meet” at the Allegro lounge between Kyle Shield, JW, and RC. Cst. Skidmore set up at the back door. He made his first observation at 14:27 hours.

[338] Mr. Shields arrived in his black BMW at 14:40 hours. He went into the Allegro lounge through the back door. JW arrived shortly after. He arrived in a brown Nissan Ultima. Video surveillance captured him, wearing an orange polo shirt with white stripes, getting into a black Jetta parked right next to his Nissan. (*Exhibit 111, Task 224, VideoAllegro-JW*)

[339] While JW was in the Jetta and Shields' black BMW sat parked outside Allegro's, investigators noted RC pulling into the parking lot. He was driving a grey Passat. RC went into Allegro's. (*Exhibit 111, Task 224, VideoAllegro-JW*) Cst. Skidmore testified that RC arrived at 14:46 hours.

[340] Video surveillance filmed JW getting out of the black Jetta and returning to his own vehicle. Shortly afterwards, he went with the Jetta driver into Allegro's. (*Exhibit 111, Task 224, VideoAllegro-JW*)

[341] On video taken by police investigators in the parking lot, Shields can be seen coming out of Allegro's and meeting an unidentified man (UM) at the trunk of his black BMW. (*Exhibit 111, Task 224, Video Allegro-Shields*) Shields opens the trunk and as he rummages in a plastic grocery-type bag, the UM pulls something out of his left pocket, thumbs through it – it would appear to be a wad of money - peels some off and tosses it into the trunk. Shields straightens up and puts what looks like a small blue package in his shorts' pocket. He and the UM then walk toward a black pick-up truck in the parking lot and get in: the UM gets into the driver's side and Shields gets into the passenger side.

[342] Cst. Mitchell taking the covert video footage speculated at the time whether the blue package could be a box of "blue Viagra." I note that no Viagra was seized from any of the relevant locations in this investigation.

[343] During the time that Shields and the UM are seated in the pickup, the investigators note (although it is not visible on the same video that has captured Shields and the UM in the truck) that RC has gone back inside the bar. (This indicates he left although I have not seen any video footage showing that.)

[344] At 15:10 hours, Shields was observed by police investigators getting out of the truck. He then leaned into the driver's side window and chatted further with the

UM. At 15:11 hours Shields walked back to Allegro's and the UM drove off in the truck.

[345] Shortly after this, covert video captured RC coming out of Allegro's. He got into a grey Passat and left. (*Exhibit 111, Task 224, Video Allegro – RC*) Surveillance was terminated at 15:25 hours.

[346] Cst. Skidmore testified to his belief that Shields remained at the Allegro lounge premises from 14:27 to 15:25 hours.

[347] Earlier, at 14:00 hours on September 9, 2011 Cst. Gould observed a grey BMW, license number EHY 276, parked at 1980 St. Margaret's Bay Road. This BMW was known to be John Field's. A black BMW – Kyle Shields' BMW - with its top down was parked behind 1982 St. Margaret's Bay Road. He did not see Shields arrive.

[348] Cst. Scott Manning also saw these vehicles, at 14:18 hours, at the same location. He recognized the vehicles as the same make, model, and style as the vehicles owned by John Field and Kyle Shields. He cannot say when the vehicles arrived and he did not see either Field or Shields.

[349] At 14:20 hours, Cst. Gould observed Kyle Shields' BMW travelling on Highway 3 toward Halifax. The driver was Shields. He has no recollection of Shields leaving 1982 St. Margaret's Bay Road.

[350] At 14:24 hours, Cst. Scott Manning saw the black BMW drive by at the Lakeside and Beechville intersection and recognized Kyle Shields as the driver.

[351] At 14:57 hours, Cst. Gould was involved in surveillance at Allegro's Lounge. He went into the bar with Cst. Munroe. From where they were seated they observed Kyle Shields with RC, JW, and another unknown man about 20 feet away. The four men were all sitting at the bar "chitchatting" as though they knew each other. Cst. Gould was not able to hear any conversation. He saw nothing in Shields' hands and did not see anything exchanged. Cst. Gould was inside Allegro's until 15:30 hours and saw Shields and RC each leave and come back.

September 10

[352] Shields continued his regular meet-ups with John Field on September 10. Shields stopped by the Allegro Lounge in an effort to find Field who had not been answering his phone. While at the bar he called Field. (*Session 2820, 17:47:02 hours*) Field agreed to meet him at another location – “there” – in a half an hour.

September 12 and 13

[353] On September 12 and 13, Shields’ re-supplying activities involved Ryan MacInnis and a man the Crown alleges was Patrick Scott. I will deal with the evidence relating to these events later in these reasons.

September 16

[354] On September 16, RC texted Shields at 20:26:47 hours (*Session 9928*) and asked “Sup hoping we could hook up around 9:30 10?” Shields got right back to him at 20:27:11 hours (*Session 9929*). He was a supplier without a supply: “Tomorrow buddy am out.”

September 17

[355] Intercepts on September 17 illustrate Kyle Shields’ reliance on John Field to maintain the supply chain. At 12:55:54 hours (*Session 10076*) Shields got a text from RC. (*Session 10076*) RC wanted to “hook up” with Shields “in the next little bit” and will call “as soon as” he can. When RC calls again at 13:15:55 hours (*Session 10082*) Shields obviously expects to be able to meet with RC relatively soon. That does not work out.

[356] At 14:27:47 hours, Shields called John Field. (*Session 10091*) He is dismayed to learn that Field is in Pictou. When Field tells him he will be “comin’ home today sometime”, Shields urges him to “...get at me asap, buddy.” Field says he will call “...as soon as I’m on my way.”

[357] With RC still waiting to meet up with him (*Session 10125, 15:51:02 hours*), Shields has to advise that he is “waiting for buddy” (*Session 10126, 15:55:43 hours*) It is obvious that “buddy” is John Field.

[358] In the end, hours pass and Shields and his customers wait. When Shields gets a call from Field at 18:18:21 hours (*Session 3113*), he is at the Allegro Lounge

and tells Field to “Just pop in here for a quick sec. I’ll talk to ya outside.” Field agrees to do so.

[359] By 19:30 hours, Shields has been killing time at Allegro’s, playing the VLT’s and drinking. Field calls (*Session 10188*) and proposes they connect the next day instead but this does not suit Shields. “No. I don’t want that”, he emphasizes, “I’ve been here all day waitin’ to fuckin’ see ya...” He wants Field to come and collect him up because he is drunk and doesn’t want to drive. He wants Field to pick him up and then “bring me back here.” Field thinks he can get there in about twenty minutes.

[360] Field makes his way to Allegro’s, calling Shields a couple of times with progress reports. (*Session 3118, 19:40:33 hours, and Session 3120, 19:43:57 hours*)

[361] Meanwhile RC is still waiting. He texts Shields at 20:02:42 hours asking: “Good?” (*Session 10204*) They talk on the phone at 20:06:20 hours. (*Session 10205*) Shields ascertains that RC can be “mobile”: up to this point he has just been waiting at home. Shields suggests that RC come and get him, “...where ya met me before there?” He has to prompt him with “Bayers Lake” and that seems to be enough for RC to remember. Shields tells RC: “I just need ya to take me home and then we’re ah, we’re good.”

[362] The only reasonable inference to be drawn from the Shields/Field and Shields/RC communications on September 17 is this: Shields was poised to re-supply RC until he found out his supplier, John Field, was out of town. He had to wait hours for Field to return and by the time he did, Shields, who had been hanging out at a favourite watering hole, was too drunk to drive. He needed Field to pick him up for a re-supply trip to the stash house and return him to Allegro’s. He was then able to arrange for RC to come and get him there – the location they had met at on September 9 - and take him home. This would have achieved two ends: getting Shields back home and getting RC re-supplied.

September 23

[363] Shields was re-supplying RC again on September 23. He first of all talked to John Field at 13:41:51 hours (*Session 3409*). Field had some running around to do.

Shields was in town and obviously wanted Field to be available. Field said he would give Shields “a jingle as soon as I’m done right.” Shields sounded resigned to the situation.

[364] At 13:55:34 hours RC is telling Shields: “I’m ready when u r u want me to pop by in half hour” (*Session 10782, text*) In a telephone call 15 minutes later (*Session 10786*), RC can come and see Shields “right now if you want, man...”, he just has to make a quick stop at the bank. Shields asks RC: “...did you need to see me too, or...” RC needs to see him so Shields proposes the following: “Okay, well, how about we’ll do what we did last time...I’ll see you, then I’m gonna go to the gym and see buddy.” That suits RC. Shields tells him: “I’m at home.” RC will be over “in like ten minutes”, a clear reference to time.

[365] Some time much later, at 17:01:15 hours, RC texts Shields: “So good?” (*Session 10802*) Not yet apparently as Shields responds at 17:02:49 hours: “No gotta shower then see him” (*Session 10803*) I infer that RC was waiting for Shields to see his supplier, John Field. He was waiting for Shields to re-supply him.

[366] At 17:32:45 hours, Shields connected with Field on the telephone. (*Session 10811*) Shields was anxious to meet up with Field, and having tracked him down says: “There he is” and “Jeez Johnny man, you tryin’ to gimme a heart attack?” Field is at “the Mug” waiting for Shields who says he’ll see him there.

[367] RC is still waiting at 17:43:28 hours. (*Session 10812*) At 19:14:44 hours, Shields has a telephone call with RC (*Session 10826*) and suggests that RC meet him at Jack Astor’s in Bayers Lake. RC says he will be there in “say, thirty-five minutes.”

[368] Police surveillance on September 23 identifies Shields meeting with Field at Allegro’s and then RC outside Jack Astor’s.

[369] At 17:51 hours Cst. Mitchell observed Shields arrive at Allegro’s in a black BMW with the top up. John Field’s silver BMW was already there. Shields was dressed in a blue shirt and white shorts. He went into Allegro’s alone. At 18:28 hours, Shields and Field leave Allegro’s in Shields’ BMW. In Exhibit 11, Task 245, MOV01315, a black BMW with the top up can be seen backing out of a

parking spot: Cst. Mitchell can be heard calling out the license plate number EUK 333 which is visible.

[370] From Allegro's, Cst. Mitchell headed for Jack Astor's. Once parked outside Jack Astor's, Cst. Mitchell had a vantage point that was 8 – 10 meters from a Passat in which there was an unknown male in the driver's seat. Shields walked out of Jack Astor's with RC. RC got into the passenger side of the Passat and Shields got into the rear driver's side seat.

[371] RC and Shields were in the Passat for less than 3 minutes. Cst. Mitchell could hear no conversation. It appeared to him that Shields reached forward and RC reached back. RC appeared to pass Shields a stack of paper. At this point the door next to where Mr. Shields was sitting was open and he had one foot out. What was being passed by RC appeared to Cst. Mitchell to be cash as Shields took in his left hand what RC handed him and thumbed through it with his right hand. It was small enough he could grab it with one hand. Folded over, Cst. Mitchell thought it was less than an inch thick.

[372] After Shields got out of the Passat, he put the stack of paper in his left front pocket. There was a brief conversation outside the Passat with RC, a conversation Cst. Mitchell could not hear. Then Shields went back into Jack Astor's.

September 26

[373] On September 26, 2011, BBM messages between Shields (*PIN #230b7844*) and Field (*PIN #23964853*) and MB (*PIN #315B0466*) indicate a re-supplying of MB .

[374] The exchange was kicked off by Shields looking for Field: "Jonny where r u buddy" (*18:23:04 UTC – 14:23:04 hours*) Unable to locate Field, Shields cannot supply MB. (*BBM message from PIN #230B7844 to PIN #315B0466 at 19:22:41 UTC – 15:22:41 hours*)

[375] Field was in touch with Shields right after Shields' BBM message to MB. He and Shields agree to meet "at the spot" at 6. (*BBM messages 19:23:17 UTC – 15:23:17 hours and 19:23:40 UTC – 15:23:40 hours*) I infer "the spot" to be the stash house.

[376] Once MB knows that Shields is meeting Field at 6 p.m. he asks if he can “stop by after?” (19:26:12 UTC – 15:26:12 hours) Although Shields agrees, he quickly suggests that meeting beforehand would be “...cool if I could grab that u home?” (19:28:58 UTC – 15:28:58 hours) MB is home and Shields tells him: “K I be up” (19:43:14 UTC – 15:43:14 hours) The guarded reference to “grabbing that” before meeting with Field supports only one inference: that Shields is collecting money from MB.

[377] At 21:34:07 UTC – 17:34:07 hours, Field was looking for Shields: “What up?” There is a long gap before Shields sends another BBM text: At 23:46:42 UTC – 19:46:42 hours, Shields tells Field: “Come on buddy am at jacks get up here” In infer that Shields and Field met previously as arranged – there is no indication in any of the intercepted communications for September 26 that they did not – and Shields wound up at Jack Astor’s.

[378] At 21:39:59 UTC – 17:39:59 hours, MB was looking for Shields. At 22:44:58 UTC – 18:44:58 hours, Shields told him: “Got that with me.” He wants MB to come out to Jack Astor’s. MB says he’ll be out “in a bit” and is not staying so wants Shields to meet him “at the car.” (22:48:54 UTC – 18:48:54 hours) I infer the intended meeting, short and “at the car”, is a re-supply meeting.

September 28

[379] On September 28, 2011, there were two telephone calls between Shields and John Field. The first one was at 14:05:09 hours. (*Session 3608*) Shields wants to “link” up with Field. It sounds as though he has been trying to track Field down. He remarks: “Holy, there he is...” and then says: “I’m tryin’ to give you my life’s savings and it’s like you don’t want it.”

[380] Shields clearly wants to give Field money to get it off his hands. He tells Field: “...I mean it’s no biggie it’s not goin’ anywhere, I just want to get it...outta my way so we can you know go over____”

[381] The next call was at 15:02:37 hours (*Session 11296*). Shields was at “the Mug” and John Field is driving there with his children. He asks Shields to “run outside for a quick sec”. He wants to know if Shields has “a bag or anythin’... Ya

got anythin' to put it in, or no?" Shields doesn't. Field says, "It don't, it don't matter. I just got the kids with me."

[382] I infer from this exchange that this is the meeting Shields was looking to have so he could give Field what I infer, from the guarded nature of the conversations, to have been money.

October 4

[383] On October 4 I find that Shields met up with John Field to re-stock for a customer. He called Field at 10:56:50 hours (*Session 11837*) to say he is "just down the road right now" and "...we may as well do this now?" They agree on twenty minutes for what I infer will be a meeting.

[384] I find the meeting to have been at the stash house. On the morning of October 4 Cst. Skidmore observed the vehicles associated with Kyle Shields and John Field in the parking lot of 1980 St. Margaret's Bay Road. Field's vehicle was his silver BMW and Shields', his black BMW. Cst. Skidmore observed Kyle Shield's black BMW at 11:27 hours and Field's BMW at 11:31 hours.

[385] Cst. Skidmore observed Shields walk across the parking lot to the apartment building. He had something white in his hand that looked to Cst. Skidmore like a piece of paper or an envelope. And while he did not see John Field nor did he see Shields enter the building, the only reasonable inference is that Shields went inside and met up with Field. *Session 11837* indicated they were intending to meet and there is no evidence that did not occur. I would expect there to have been calls and/or texts between Shields and Field if a planned meeting was aborted for some reason.

October 5

[386] October 5 was a day when Shields re-supplied a customer he recently had to collect a debt from. I will discuss that debt later. At 11:44:51 hours (*Session 11991*) Shields texted CH about the order CH was placing. After advising CH he will see him later (*Session 11995, 12:12:10 hours*), Shields called John Field. Shields and Field agreed to meet without delay.

[387] After this, Shields and CH exchanged texts with a view to meeting up. They settled on meeting in Sackville, the community where Kyle Shields lives. (*Sessions 12095, 12097, 12108*)

October 6

[388] On October 6, Kyle Shields arranged meetings with Suzanne Davidson and MB . The communications with Suzanne Davidson were between 17:45:51 hours and 19:50:37 hours. It was Suzanne Davidson who texted Shields at 17:45:51 hours (*Session 12341*) wanting to know: “Hey we still meeting today?” Shields confirmed they were: “Ya” (*Session 12344, 17:58:40 hours*) They eventually arranged to meet at Eastside Billiards (*Session 12371, 19:04:29 hours*) Davidson got there at 19:31:12 hours (*Session 12376*) Shields didn’t get there until 19:50:37 hours (*Session 12386*)

[389] Prior to arriving at Eastside Billiards to meet Davidson, Shields was in contact with John Field, having arranged to meet him. At 19:15:43 (*Session 40141*) Field, who has been waiting for Shields at Eastside Billiards, is wondering where Shields is because he has to “take off.” Shields tells him he is: “just almost there” and says: “Anyway you can go, where are you going, right back there now?”

[390] I infer that “right back there now” is the stash house, particularly because when Field had earlier spoken with Shields at 19:01:03 hours (*Session 4040*), he had suggested Shields come to Eastside Billiards where he was having a beer: “...you can come here for a sec and then we’ll head out, or somethin’ if you want.”

[391] There was time before Shields arrived at Eastside Billiards to meet with Davidson for him to have gone to the stash house with John Field to re-supply. Bayers Lake where Eastside Billiards is located and 1980 St. Margaret’s Bay Road are just down the road from each other.

[392] At 19:37:07 hours, obviously having met with Davidson, Shields was on the telephone with MB. (*Session 12381*) He tells MB he is leaving Bayers Lake in “about ten minutes” and can meet him somewhere in Sackville. They settle on meeting at the Boston Pizza. (*Session 12400, 20:33:14 hours*)

[393] Kyle Shields was home when a late call for service came in from CH. At 22:01:16 hours, CH texted Shields to say: “Need to see you tomorrow.” (*Session 12406*) “No prob” Shields texted back, “msg when ready.” (*Session 12407, 22:01:54 hours*) CH texted again: “Any chance we can do it tonight” (*Session 12410, 22:02:56 hours*) “Maybe” said Shields. (*Session 12411, 22:03:12 hours*) In a telephone call at 22:04:20 hours (*Session 12412*) CH explains: “If I could see ya tonight, I could probably even...get like twenty and like pay for half of it when I see ya.” This sounds like a proposal for Shields to “front” him some product. Ultimately they agree that CH will call Shields the next day. As Shields puts it: “...gimme a call and we’ll work it out.”

October 7

[394] CH did get in contact with Shields the next day, October 7. All their communications were by text and clustered: five of them were between 13:28:13 hours and 13:31:41 hours. The remaining nine texts were between 18:44:39 hours and 19:49:40 hours.

[395] After agreeing to meet with CH at 6 p.m. (*Sessions 12497 and 12498, 13:28:13 hours and 13:29:46 hours*), Shields was in contact with John Field. (*Session 12562, 14:51:26*) CH had placed an order (*Sessions 12499 and 12502*) and Shields was making arrangements to meet up with Field. It was mid-afternoon and Field was waiting for his wife to come home. (*Sessions 12562 and 4068*)

[396] At 15:33:27 hours, Shields is on the move, still wanting to meet up with Field: “Where you at?” Field tells him “two minutes” and Shields says: “Okay, fuck it. I just drove by your house.” (*Session 4074 – a telephone call*)

[397] After this, the texts between CH and Shields from 18:44:39 to 19:49:40 hours relate to CH wanting to meet Shields in Sackville and settling on a venue. Shields says he will be at the Superstore liquor store. (*Session 12617 at 19:31:50 hours*) He has CH’s order, previously mentioned, “Alright u wanted 20 mins?” (*Session 12613, 19:26:56 hours*) to which CH replies: “Ill take it...that’s cool bud” (*Session 12615, 19:27:42 hours*) Another successful re-supply was just about to be achieved.

Transporting for Resale or Distribution is Trafficking

[398] The intercept evidence I have just reviewed indicates that Kyle Shields' trade in a controlled substance involved transporting it for the purpose of it being resold or distributed. This constitutes trafficking. (*R. v. Collins*, [2009] N.J. No. 55 (P.C.), paragraph 33) The number of meetings and their frequency, the need on occasion for money to be collected before product can be obtained from Shields – e.g. JW telling Shields on August 4 that he needs to “collect up a bunch of money”, the amount of product being supplied, the references to downstream clients – e.g. Suzanne Davidson telling Shields on August 12 that she is going to Truro for a 3 day concert and a “bunch of people” want “to bump” into her there, discussions about debt (which I will refer to later in these reasons), and the regular contact with John Field who has access to the stash house, all support only one rational inference; that Kyle Shields was supplying a group of regular customers with product that was then resold. The intercepts indicate that Shields re-supplied customers from his home and also transported the product to them. Transporting by Shields was a feature of his relationship with “Bridgewater” Pat, which I discuss in Part VI of these reasons.

Does the Evidence Prove Cocaine?

[399] Mr. Sarson has submitted that the central issue in this case is the nature of the substance involved. The Crown conceded that convictions against Kyle Shields and Patrick Scott, subject to the identity issue, can only be made out if there is proof beyond a reasonable doubt that the substance was cocaine. It is not enough for me to decide that the substance was probably cocaine.

[400] Mr. Sarson and Mr. McGuigan have said I should find, in a number of the intercepts, reasonable doubt about the product being transacted. They submit there is ambiguity in the discussions the Crown has said are about pricing, and no way of determining, if I am satisfied there was trafficking going on, that cocaine was the commodity being trafficked. Mr. Sarson points out that only cocaine residue was located in the search of Kyle Shields' living quarters at [...] Sapphire Crescent and such residue evidence only supports an inference of personal use. The investigation of Patrick Scott produced no cocaine at all, and as I noted earlier in these reasons,

nothing to suggest he had any connection to the 1980 St. Margaret's Bay Road stash house.

[401] The principle focus of the Defence attack on the Crown's case is on the inferences I have been asked by the Crown to draw from the evidence – for example, inferences that the “minutes” referred to in the intercepts were references to grams of cocaine; that the numbers of “minutes” discussed can only have been in relation to grams of cocaine; that very low pricing numbers can only be explained by inferring that the product was heavily adulterated cocaine; that frequent re-supplying indicates the nature of the substance – addictive and eagerly sought-after cocaine hydrochloride and crack cocaine; that only cocaine, and not bulkier cannabis marijuana, can be concealed under clothing and not visible to surveillance; and that significant drug debts can only be explained as cocaine debts when they could represent what is owed as a result of the transaction of other commodities.

[402] The Defence has submitted that were I to find the transactions discussed in the intercepted communications involved a controlled substance, I cannot be satisfied beyond a reasonable doubt that the substance was cocaine. Cocaine, they say, is not the only rational inference to be drawn from the evidence. Noting that marijuana was found at the stash location, the Defence submits it is a reasonable inference that the controlled substance referenced in the intercepts was marijuana.

[403] Mr. Sarson and Mr. McGuigan submit that the Crown's case has been stitched together with conjecture and speculation. They argue that when the threads of the conjecture and speculation are pulled, the case against their clients unravels. They say that Sgt. Vail's opinions are mostly too speculative to be accorded weight.

[404] I am left in no doubt that in the summer and early fall of 2011, Kyle Shields was involved in selling - that is trafficking - and transporting, which also constitutes trafficking, a controlled substance or substances. I am satisfied beyond a reasonable doubt that at least some of what Shields was selling came from the stash location at 1980 St. Margaret's Bay Road, as indicated by the evidence I have been reviewing. I have found the evidence establishes that Shields was taking orders from customers and filling them by obtaining product from John Field. The

re-supplying of Shields so he could re-supply his customers involved Shields meeting Field regularly at the stash house.

[405] Earlier in these reasons I discussed the evidence Sgt. Vail gave about the practices in cocaine trafficking of “stepping on” product, “shorting” customers, and “fronting” drugs to trusted distributors. “Shorting” and “fronting” are not unique to cocaine trafficking although the evidence satisfies me that marijuana is not a drug that is “stepped on”, although, as I noted previously, “shake” is sometimes added to what is being sold.

[406] The intercepted calls and texts used a coded term that all the participants understood. While none of the universal terms for cocaine or cannabis marijuana were used, I find that the term “minutes” was a quantitative reference to the product being obtained from the stash house and collected by, or delivered to, the waiting purchasers.

[407] In Sgt. Vail’s opinion, the references to “minutes” in the intercepts are references to grams of cocaine hydrochloride or crack cocaine. The Defence submits these references could as readily be about cannabis marijuana.

[408] While I find Sgt. Vail’s evidence about drug distribution networks, the differential pricing of cocaine and cannabis marijuana, the drug trafficking practices of “fronting” and “shorting”, and the practice of adulterating cocaine to maximize profits to be authoritative, and have used this evidence in my assessment of the intercepted communications, I have drawn my own inferences about what product was being discussed and transacted. I will be referring to arguments made by Mr. Sarson and Mr. McGuigan about certain intercepts although it should be understood that in my analysis of the evidence I have considered all their submissions. Some points they raised I have already discussed earlier in these reasons.

The Meaning of “Minutes” and Drug Debt Evidence

July 7- Session 280 (Shields and MB)

[409] On July 7, 2011 at 14:45:00 hours, Kyle Shields had a discussion with MB which the Crown expert, Sgt. Vail viewed as a discussion about prices. In the call,

MB said “I’ll probably do seventy if I can.” In Sgt. Vail’s opinion MB’s reference to “seventy” cannot relate to cannabis marijuana, cannabis resin, or MDMA. And although Sgt. Vail testified that it could relate to methamphetamine in powder form, he explained this is not a drug of choice in Nova Scotia or the Atlantic region. It is not a price per tablet of MDMA. No methamphetamine or MDMA was found at the stash location or any of the search sites in this case.

[410] This is the intercept where Shields was concerned to make some money off the deal that, in Sgt. Vail’s opinion, he was facilitating. He told MB he’s “gotta make a brownski off it somehow.” He suggested that MB should just “jam it with somethin’” To Sgt. Vail this was a reference to “stepping on” the product. What Shields was talking about is unclear. He said to MB: “Jam it with, well, then take two out and give it to me. And jam it with two no good, so it’ll be eight.”

[411] Further in the discussion, Shields told MB that he was getting “it” for “fifty-five”. In Sgt. Vail’s opinion this was a reference to price per gram. He doubts that Shields was being honest with MB in saying this. Sgt. Vail thought it likely that Shields was getting “it” for less. He agreed under cross-examination that there is nothing in the intercepts to support an inference that Shields was being untruthful. Mr. Sarson also pointed out that the evidence indicates that Shields and MB were friends. I view it as conjecture to suggest that Shields was lying to MB about his cost. I found no evidence that indicated Kyle Shields was duplicitous with anyone in the supply/distribution chain.

[412] MB revealed that he had told “him”, presumably the cousin he had mentioned to Shields earlier in the call, that he would “do it for sixty-five.” In Sgt. Vail’s opinion this is a drop per gram from the seventy that MB mentioned at the start of the call.

[413] Shields told MB he wanted to “make a bean” off the deal he was facilitating. MB thinks he means a “G”, in other words, a thousand dollars but Shield says he means a hundred. Curiously, in a later intercepted conversation on August 12, (*Session 6231*) Shields uses the term “bean” to mean one thousand dollars when talking about the amount of money that “Dove” has owed him for a year. (*August 12, 2011 Sessions 1785 and 6225*) This suggests that Shields does not always use this term consistently.

[414] Back to Sgt. Vail's opinion about the content of Session 280 on July 7, 2011, the telephone conversation between Shields and MB, what Shields will accept for facilitating the deal – one hundred dollars – he reduces to fifty dollars, “All right”, give me fifty then” he says to MB.

[415] Sgt. Vail agreed on cross-examination that this is a very small profit especially where, as he has said, the risks associated with cocaine trafficking would be known to Shields and are substantial.

[416] The reference Shields made in the July 7 Session 280 call with MB to “fifty-five” is the only amount mentioned in the evidence for what the product is costing Shields. Mr. Sarson has submitted that varying amounts are referred to throughout the calls for the price of the unnamed product – 43, 65, 70, 75 and perhaps even 95 in a call Suzanne Davidson and Kyle Shields have where the figure 950 is mentioned and Shields is going to set “10 minutes” aside. (*Session 5406 on August 5*) Mr. Sarson submits that ten “minutes” at 950 dollars is 95 dollars a “minute”, and therefore 95 dollars per gram if I find that “minutes” was the code word for grams.

[417] There are varying price points mentioned in the intercepts, none of which in Sgt. Vail's opinion accord with the prices for cannabis marijuana.

Defence Submissions about Sessions 280 and 261 on July 7

[418] Sgt. Vail testified to his opinion that Shields was a “busy mid-level” dealer. Mr. Sarson has made the point that the quantities being transacted - 5, 6, 8, and 9 minutes - are street level amounts. He says I should be asking the question, if Shields is a busy mid-level dealer why is he dealing in street-level amounts? But the placement of Kyle Shields in the hierarchy seems to be the basis for Sgt. Vail's opinion – that is, in this investigation, John Field was at the top of the ladder, with Shields a rung down, and Ryan MacInnis, MB, Suzanne Davidson, and others on the rungs below. And these smaller amounts are not the only numbers mentioned: other calls refer to 20, 30, 50, 70, and in one call Ryan MacInnis has with Kyle Shields, even 100 is the amount requested. (*Session 4267, July 28 Shields and MacInnis*)

[419] References made by MB in call on July 7 with Kyle Shields (“*I need dinner*” – *Session 280*) and John Field (“*but is...the kitchen there?*” – *Session 261*) led to Sgt. Vail forming the opinion that MB was looking for crack cocaine. Sgt. Vail inferred that “dinner” and “kitchen” meant crack because crack is produced by cooking which requires a heat source. Sgt. Vail has never heard the term “dinner” used to describe crack. “Kitchen” is also not a term that Sgt. Vail is accustomed to hearing as a term for crack cocaine.

[420] Crack of course, cannot be “jammed” - that is “stepped on”- although its main ingredient – cocaine hydrochloride - can be adulterated before the cooking process.

[421] I find the inference drawn by Sgt. Vail from the references to “dinner” and “kitchen” to be too speculative. It is an opinion that amounts to nothing more than a good guess.

July 11- Session 1642 (Shields and JW)

[422] On July 11, Shields had a telephone conversation with JW (*Session 1640*) where JW says “gotta be the usual.” (*Session 1642*) Shields replies with a question: “30 mins?”

[423] I accept Sgt. Vail’s evidence that “the usual” in *Session 1642* is an example of guarded conversation. Where a relationship is established between a purchaser and a trafficker-supplier a price point may be agreed upon, which if both parties are happy, eliminates the need to discuss specifics.

[424] Shields followed up the call with JW by calling John Field. (*Session 452*) He told Field his “buddy wanted to hook up for like thirty minutes.” Shields needs Field to bring the product to him because he is immobilized by his injured ankle. It was Sgt. Vail’s opinion that “thirty minutes” did not make sense as a measurement for grams of cannabis marijuana as it would not have been worth John Field’s while to transport thirty grams of marijuana. Sgt. Vail testified that in his opinion that price points that were discussed did not make pills an economical option either.

July 13 (Shields and KD)

[425] On July 13, Shields received an order from KD for "...9 min" (*Session 2036*) In Sgt. Vail's opinion this reference to "9 min" is not a reference to 9 grams of cannabis marijuana. He queried what the profit margins would be for the trafficker selling such a small amount of marijuana. If, for example, the trafficker was selling the cannabis marijuana for \$10 a gram, having purchased it for \$5 or \$6 a gram, the profit to him for the 9 "minutes" (grams) would be \$36, in Sgt. Vail's opinion, not a big profit for a drug trafficker. On the other hand, 9 grams of cocaine hydrochloride, purchased at \$50 a gram and sold for \$70 a gram, the profit would be \$180. And further, testified Sgt. Vail, if the purchaser in this scenario is a trafficker himself, buying cannabis marijuana at \$10 a gram and then selling it at \$11 a gram, "he's making next to nothing." It was Sgt. Vail's opinion that, using a cannabis marijuana profit margin model, it does not make sense for "9 minutes" in Session 2036 to be 9 grams of cannabis marijuana. This evidence is persuasive.

[426] Mr. McGuigan submitted that these minute amounts could be inferred to be references to ten times the amount, making these apparently small transactions considerably more profitable. I will address this submission in due course.

July 16 (Shields and JW)

[427] On July 16, Kyle Shields communicated extensively with JW. JW wanted "30 mins." (*Sessions 2742 and 2743*) As discussed earlier in these reasons, I have concluded that on July 16, Shields re-supplied JW at the Fairview Legion once John Field arrived with the product. Subsequent texts between JW and Shields indicate that money changed hands: specifically JW paid Shields money for the product he received. The intercepted communications confirm that Shields expected to receive \$1800 for the controlled substance he supplied to JW. (*Sessions 2779, 2781, 2782*)

[428] It is Sgt. Vail's opinion that JW's "30 minutes" in Session 2742 refers to grams of cocaine hydrochloride. His reasoning emerges from an analysis of the numbers discussed in the Shields/JW Sessions 2779, 2781 and 2782. Sgt. Vail testified that "30 for 1800 are your numbers...that's 60 on the gram..." He said: "It is not cannabis at this price" in the Halifax Regional Municipality. He eliminated all other possible drugs – cannabis resin, MDMA, heroin, methamphetamines, dilaudid, valium, oxycontin and said, "only cocaine or crack cocaine fits into this

[price].” I accept Sgt. Vail’s evidence and find that in 2011 cannabis marijuana was not selling for \$60 per gram.

Defence Submissions about July 16 – Session 2779

[429] Sgt. Vail agreed on cross-examination that \$1800 is consistent with the price of a pound of marijuana. Mr. Sarson argues that this undermines the Crown’s case that one “minute” is one “unit” or one gram of cocaine. However I cannot view this argument in isolation: it is not as though this transaction - \$1800 for 30 – is the only transaction in the mix. And furthermore, the figure “30” was expressly mentioned with no reference to the \$1800 relating to anything that could be quantified as a pound.

[430] In his cross-examination of Sgt. Vail, Mr. Sarson pointed out that if it is assumed that the “30 mins” refers to 30 grams of cocaine hydrochloride that is slightly more than an actual ounce which is 28 grams. Sgt. Vail responded by agreeing, that is, he said, if what was held out to be 30 grams was in fact 30 grams, a comment that contemplates the “shorting” practice in drug transactions.

July 17 (Shields and KD)

[431] On July 17, KD texted Kyle Shields and told him, “Swing down bro, 8 min” (*Session 2864*) Again, this is a very small amount of marijuana for Shields to be selling if minutes refers to grams of marijuana. Eight “minutes” or grams of cocaine hydrochloride or crack cocaine represent a more profitable transaction.

[432] The Shields/KD transaction for 8 minutes is another example of small amounts of a controlled substance being transacted. There is nothing in the intercepts that supports an inference that Kyle Shields’ commercial dealings were for negligible profit. To the contrary, the references to making money and the extent of the debts that accumulated indicate substantial profit.

July 21(Shields and Suzanne Davidson)

[433] The intercepted communications on July 21 indicate that Shields was transacting a controlled substance that was neither cocaine nor marijuana. This would fit with the multi-commodity business model that aims for an expanded market and greater profits. Shields informed Suzanne Davidson that he had

“...called buddy for the pain things no answer.” (*Session 3180*) Davidson acknowledges this (*Session 3181*) saying: “K but I can see u klater for the usual?”, an indication that she is not only interested in “the pain things” but also wants what she typically gets from Shields – “the usual.” There are other intercept references that indicate Shields had a multi-commodity trade. For example, on September 29, Shields exchanged texts with Ryan MacInnis (*Sessions 11406 to 11411*) which indicate that Shields had “fronted” “things” to MacInnis and was waiting for MacInnis to collect payment for them. Shields was frustrated because he had 900 tied up: “...I usually never bug but those things are different”. (*Shields’ text to MacInnis, Session 11411*) Also on September 29, Shields asked John Field if he could get “the things that all them guys like” and to identify what he was talking about referred to “that thing [that] made him go all cuckoo, all crazy...” (*Session 2788*) Field said he could ask indicating that the supplier was “just doin’ it for friends, usually, right?” It is obvious that these September 29 conversations are not about either cocaine or cannabis marijuana.

[434] In her conversations with Kyle Shields on July 21, Suzanne Davidson wanted to know if she can “grab more than usual cause the weekend.” (*Session 3255*) She also wanted to know how long Shields will be before he can re-supply her “so I can tell everyone.” (*Session 3260*) She indicated she would need to go to the bank before Shields came to meet her (*Session 3281*), which I infer means she did not have the money on hand to pay for the “more than usual” she was buying from him.

[435] July 21 was a Thursday. I infer that Davidson was readying herself for more robust sales during the approaching weekend. She needed “more than usual” from Shields and wanted to give her purchasers the heads-up on when she would be re-supplied and stocked with product. Sgt. Vail testified that cocaine hydrochloride is a “social, party drug” that people would tend to use on weekends.

[436] The exchanges between Kyle Shields and Suzanne Davidson on July 21 are not particularly helpful in the determination of whether Shields was trafficking in cocaine: Sgt. Vail agreed on cross-examination that cannabis marijuana can also be a weekend-use drug and Davidson’s anxious purchasers might have been eagerly awaiting a fresh supply of weekend weed.

[437] However, there is nothing inconsistent between the evidence indicating that Kyle Shields was a multi-commodity trafficker and the allegation that he was trafficking in cocaine. It is relevant that the search of the stash location located cannabis marijuana and cocaine hydrochloride and crack cocaine.

July 22 (Shields and KD ; Shields and JB)

[438] On July 22, the term “minutes” was used by KD and JB. The amounts mentioned in the KD exchanges were small: intercepted communications refer to 5 and 6 minutes and the discussion clearly concerned a debt that KD owed Shields. (*Sessions 3376, 3377, 3378, 3380*) Shields says to KD in the course of their exchanges: “Plus the 2 u owe me?” (*Session 3378 - text*) and even though it is apparent that KD’s debt is not going to be retired in the course of the transaction being discussed, that is unremarkable in the context of this case where there are other examples of Shields being sanguine about his accounts receivables.

[439] It was Sgt. Vail’s opinion that the low numbers referred to in the Shields-KD texts cannot have referred to cannabis marijuana as the profit margins would be too low on such miniscule amounts of product. As I have already said, I find that the commercial enterprise captured by the intercepts was not built on a minimal-profit model.

[440] On July 22, JB was interested in considerably more product, telling Shields he was looking for “...70 I guess...” (*Session 3396 - text, 12:28:06 hours*)

[441] JB was looking to stop by Shields’ residence and texted Shields at 14:14:28 hours on July 22 (*Session 3419*) to ask whether he could “stop up now?” Shields was out. JB will wait for Shields to call. (*Session 3422*)

[442] At 16:06:47 hours, Shields called J (*Session 3440*) and provides instructions on where to find something in the house – “Look, I’ll make it even easier for ya. Walk down the stairs. Ah, are ya in the house yet?” Shields tells JB he will tell him “right where it’s at.” Shields goes on to tell JB that “...there’s sixty minutes, that’s all I had layin’ around.” He makes a proposal to JB: “...you can leave for seventy and I can run ya over the other ten minutes later on. Probably tomorrow actually. It’s up to you.”

[443] Shields then goes on to say, “If you get seventy, just leave enough just for forty-three times seventy...and then I’ll just bring ya the other ten minutes tomorrow.”

[444] It was Sgt. Vail’s evidence that the “sixty minutes” reference in Session 3440 related to cocaine hydrochloride. He could think of no other substance this could refer to. He agreed on cross-examination that the only way cocaine at \$43 per gram - “If you get seventy, just leave enough for forty-three times seventy” – fits into the picture is if the cocaine hydrochloride was of a lesser quality. Sgt. Vail said in his direct testimony that \$43 per gram cocaine is cocaine that has been fairly heavily stepped on.

Defence Submissions about Session 3440 on July 22

[445] Sgt. Vail agreed with Mr. Sarson that there is nothing in the intercepted communications between Shields and JB to suggest that the “seventy minutes” was of a different quality than any other cocaine.

[446] Although on the one hand there may have been discussions between Shields and JB about product quality that were not intercepted, for example, in-person discussions, it is a fact that none of the cocaine at the stash house was adulterated to this extent. However, in the Crown’s submission, Shields could have been “stepping on” the cocaine once it came into his possession from whatever source. The Crown points to the fact that digital weigh scales (*Exhibit 22*) seized from Shields’ bedroom were contaminated with cocaine hydrochloride and caffeine, both of which were found in the stash house. Shields’ scale was seized by police but it was not tested to see if it was functional. I think it is very unlikely to have had drug and cutting agent residue and not have been working. If the scale wasn’t working I would expect it to have been in a more disused condition. It was accessibly located next to a spoon contaminated with cocaine hydrochloride and caffeine and looks to have been well-used. (*Exhibit 4, photographs 0438 and 0439*)

[447] I earlier mentioned the Defence submission that each reference to “minutes” could have been intended to indicate a “ten times” calculation, that is a reference to six “minutes” was really about sixty “minutes” that is sixty, not six grams. The

Defence submits that at these amounts a trade in cannabis marijuana would have been profitable.

[448] The “ten times” interpretation of the coded term “minutes” does not stand up to scrutiny. It does not work well when applied to a number of the intercepted communications. One such example is Kyle Shields’ conversation with JB (*Session 3440*) where he guided JB to the sixty “minutes” he had under a blanket on a chair. Using the Defence inference, this would have been 600 grams of cannabis marijuana or about 1.3 pounds. I do not find it to be a plausible scenario, especially as Shields was proposing bringing another ten “minutes” to JB the next day, that is, using the “ten times” calculation, another 100 grams. I also reject this argument because, as Sgt. Vail has indicated, in these quantities, cannabis marijuana would not be measured in grams.

[449] While it has been suggested by the Defence that “minutes” may not have meant the same thing to each purchaser, there is nothing in the intercepts that indicates to me Kyle Shields was using the same coded term to refer to different products for different customers. I do not find this suggestion to be at all plausible.

July 28 (Shields and Ryan MacInnis)

[450] Another similar example of the “ten times” calculation not fitting the facts is apparent from a telephone conversation between Kyle Shields and Ryan MacInnis on July 28. Shields asked MacInnis if he wanted “like fifty minutes...” but MacInnis preferred “a hundred, saying “a hundred would be all right if you got it.” (*Session 4267*) A hundred “minutes” using the “ten times” formula for the code would be 1000 grams of cannabis marijuana. This does not represent how cannabis marijuana is measured. I find this not to have been a discussion about marijuana.

[451] I find it implausible that quantities of cannabis marijuana would be discussed using a “minutes times ten” code.

July 28 (Shields and Davidson – the “one point eight” intercept)

[452] In an intercepted call with Kyle Shields on July 28 Suzanne Davidson asked him to do her a favour and put aside “one point eight”. Shields said he would. (*Session 4307*) The only inference that can be reasonably drawn from the evidence

about this amount is that it was a request for crack cocaine. Although Sgt. Vail testified that he was unfamiliar with the use of “one point eight” in relation to grams of cannabis marijuana, cocaine hydrochloride, or crack cocaine, it was his opinion that it could have been a reference to nine .20 rocks of crack cocaine which would have totaled 1.8 grams. I find this to be the only reasonable inference to draw.

[453] Debt was also a subject of discussion on July 28. In the July 28 call between Kyle Shields and Ryan MacInnis (*Session 4267*), there was discussion about how MacInnis’ work on John Field’s deck was going to pay down his debts with Shields. “Dove” was going to be working with MacInnis on the deck to pay off his “nine fifty” and the “eighteen” he owed MacInnis. In the call MacInnis told Shields that he would “chuck” him “another two or somethin’ and then I’ll be pretty much fuckin’ caught up, right”. I infer from this that MacInnis was talking about paying Shields some more money against his debt.

Defence Submissions about Sessions 4267 on July 28

[454] Mr. Sarson has submitted that the debt amounts discussed by Shields and MacInnis on July 28, which in Sgt. Vail’s opinion were too high (calculated in the thousands) for mid-level cannabis trafficking, may not have been accumulated as a result of drug trafficking at all. There is no evidence that indicates what the debt was for. Mr. Sarson says the call does not provide a basis for inferring that Kyle Shields was engaged in cocaine trafficking.

[455] Other than the amounts, which, based on Sgt. Vail’s opinion, I find could not have been from cannabis marijuana sales, the July 28 debt talk does not tell me much. The intercepts make it apparent that a commercial enterprise was being undertaken and I am amply satisfied that its focus was controlled substances. If any other type of business dealings contributed to the debts owed by various individuals, it was comparatively insignificant.

August 4 (Shields and Field)

[456] Intercepted discussion about the significance of even a small amount of “minutes” contributes to unlocking the puzzle about what the coded word meant. On August 4, five “minutes” of the product occasioned some concern for Shields

later on that day. A call between Shields and John Field at 17:38:15 hours (*Session 5200*) establishes that they had been together sometime earlier in the day, which was indicated in their call at 13:53:46 (*Session 5156*).

[457] In *Session 5200* Shields wanted to know if he might have left “that five minutes at buddy’s?” Field doesn’t know. He thought Shields “had it” but offers to “double check the next time I check it there.” I take this to be a reference to the stash location.

[458] Shields has just been at Swiss Chalet and hopes he didn’t lose it there. He remembers putting “it” in his pocket and just doesn’t know how it could have fallen out. Losing “it” is less of a concern to Shields. It is more that once it is missing, it is “floatin’ around... and who knows...who scooped it up, right”. Field has the same view.

[459] Kyle Shields’ worries on August 4 about losing “five minutes” is indicative of something small that had a large value. In Sgt. Vail’s opinion, 5 grams of cannabis marijuana at \$10 a gram would be a loss of only \$50. However, 5 grams of cocaine at \$40 to \$50 per gram is a loss of as much as \$250 which is considerably more significant. I also note that Shields seemed to be unsettled by the thought of having dropped the “five minutes” in a public place, which brings to mind Sgt. Vail’s testimony about the greater penalties associated with cocaine than marijuana.

August 5 (Shields and Davidson)

[460] Product, which I find was to be transacted in quantities measured in “minutes”, was discussed by Kyle Shields in an August 5 call with Suzanne Davidson. In a very guarded conversation Shields first talks about dropping “that” off and “maybe get that back tomorrow or the next day?” (*Session 5294*) Davidson has a customer, “buddy” and Shields is unequivocal about not wanting to meet him. He also rejects Davidson’s proposal that she give him “the money tomorrow” and says: “No, no. That’s gotta...be today. Just get that...from him and then...you can give him the twenty, you know, what I mean. And I’ll give you the other twenty-five.” He tells Davidson to just tell him when her buddy gets there and “then I’ll come. I’ll come and we’ll do it right then...”

[461] Not only were Shields' references to "twenty" and "twenty-five" very similar to other intercepted conversations in which "minutes" were expressly mentioned, only an hour after the conversation Davidson was talking to Shields again and wanted "another ten minutes." (*Session 5307*) I infer from this that what was previously being discussed, the "twenty" and the "twenty-five", were "minutes". This is confirmed by how Shields responded: "Yeah, bring what I already brought and then another ten minutes."

[462] There is a later discussion on August 5 between Shields and Davidson (*Session 5344, 20:52:43 hours*) which involved Shields helpfully explaining what Davidson has acquired from him. Davidson asks: "There's not twenty-eight in one is there, it's twenty-five isn't it?" Shields tells her: "Yeah, I always go by that..." Davidson was seeking a clarification because, she tells Shields, "he" - obviously referring to the "buddy" she had mentioned in the earlier calls - thought it was twenty-eight whereas she was "pretty sure it's twenty-five."

[463] In the call, Shields tells Davidson: "An actual thing is that but, no one ever sells them like that." A little further in the call he says: "...Like if you were to buy an actual pound. That's four fifty-four, but no one ever does that, it's four fifty." At the end of the call, Shields tells Davidson: "...find out whatever the grand total is, he wants, there's twenty-five minutes there now and whatever else he wants on top of that and...I'll bring that, and then I'll bring your ten minutes separate."

[464] I find that Shields was referring to grams, ounces, and pounds. There are 28 grams in an ounce - "an actual thing is that..." There are 454 grams in a pound - "...Like if you were to buy an actual pound. That's four fifty-four..." I find that Davidson was inquiring with Shields about a substance that is measured by the street ounce, in this case, 25 grams. Shields uses a pound example to illustrate his point that a street amount is less than the actual amount. Although as Mr. Sarson points out, a pound is a marijuana measurement, given how it was mentioned in the call, it does not suggest to me that the call could have been about cannabis marijuana.

[465] The discussion in Session 5344 - "There's not twenty-eight in one is there, it's twenty-five isn't it?" - is consistent with the evidence given by Sgt. Vail about measurements in the cocaine trade and the concept of "shorting."

Defence Submissions about Sessions 5343, 5344, and 5406 on August 5

[466] In one of the August 5 intercepted conversations with Shields – Session 5343 - Davidson wanted to know if her friend was to get “three” would it be any cheaper, that is, was there a bulk discount. Shields asks if Davidson is referring to a “Seventy-five type deal?” She is, but all Shields says he can do is “knock a buck off.” Davidson acknowledges “it’s still a pretty good price...” Shields muses about possibly discounting the price if Davidson’s purchaser “did two more maybe...” He tells Davidson: “...I’ll just work out how much it would come to and then I’ll just knock off a few bucks, you know what I mean...I’ll work somethin’ out.” He tells Davidson he’ll have another one ready “just in case”.

[467] The whole conversation was very guarded. No product was mentioned. What was being discussed is obscure – what is a seventy-five type deal? Sgt. Vail, referring to the notion of a “seventy-five type deal” being “three”, testified that 25 grams would be consistent with a street ounce. Mr. Sarson submits the call indicates Shields was not prepared in the end to incentivize the sale of a third ounce (25 street grams) – which, if the discussion was about cocaine, would have fetched him \$1800 to \$2200 – and that this unwillingness to make a bigger sale is inconsistent with Sgt. Vail’s profit model theory of cocaine trafficking.

[468] However it can be reasonably inferred that Shields’ unwillingness was due to the fact that he was already selling the commodity at a very favourable price and did not want to discount it further. The intercepts disclose that Shields had no difficulty off-loading product. He did not need to sweeten any deals to move his merchandise.

August 5 – Session 5406

[469] In Session 5406 on August 5, Shields and Davidson had a telephone conversation about prices. She says “Nine fifty-three” and he tells her “just nine fifty or whatever” and then indicates if she is “keepin’ that phone it’s be eleven fifty.” The phone is an add-on, \$200 for the phone. This is the call Mr. Sarson says could indicate a price point of \$95 per gram of cocaine using the one “minute” is one gram analysis advanced by the Crown in relation to Shields having told Davidson in Session 5344, “...I’ll bring your ten minutes separate.” In other

words, if Davidson was paying Shields \$950 for ten “minutes”, the one “minute” is one gram would mean those ten “minutes” cost \$95 each.

[470] A \$95 per gram price point would be markedly higher than the \$43 per gram calculation made for the JB purchase in Session 3440 on July 22 with nothing in the intercepts that indicates different qualities of product. What is not clear from the Shields/Davidson conversation is what the price of nine-fifty included as there is no discussion to explain exactly what it related to. I find it is not reasonable to infer that it was just for the “ten minutes separate” that Shields told Davidson he would deliver. Davidson and Shields had enough buying and selling underway that “nine-fifty” could easily have been for more than the “ten minutes” Shields says in Session 5344 he is going to deliver to her “separate.”

August 9 (Shields and Field)

[471] On August 9, Kyle Shields was intercepted trying to figure something out. In the call, Shields tells Field: “Fuck man, I can’t tell what one’s mine.” John Field had to help Shields distinguish which of “the crumbly one” and the “two pieces” was his. (*Session 1660*) Field told him his was “the crumbly one” and would fall apart if he pushed it but the two pieces, which the call indicated was intended for someone else, could be squeezed and wouldn’t break.

Defence Submissions about Session 1660 on August 9

[472] Mr. Sarson has described the “crumbly one/two pieces” intercepted conversation between Shields and Field as a very significant call. He says Shields’ confusion is inconsistent with the Crown portrayal of him as a cocaine trafficker. Sgt. Vail testified on cross-examination that “the crumbly one” would have been unstepped-on cocaine hydrochloride. The “other one” would have been “stepped on” and re-pressed. In direct examination Sgt. Vail testified that chunks can be broken off cocaine in brick-form. Crack is really difficult to break.

[473] Mr. Sarson has pointed me to the photographs taken at the stash house of crack cocaine (*Exhibit 4, Photographs 1048 and 1049*). Photograph 1051 is a photograph of pressed bricks of cocaine hydrochloride which are not intact. The bags contain cocaine in solid brick-form with some crumbling. Mr. Sarson submits the exhibited cocaine indicates that brick cocaine can crumble. Mr. Sarson says the

Crown's theory about Shields as a busy mid-level trafficker, re-upping on a regular basis, dealing in crack and cocaine hydrochloride, and attending at the stash house, cannot be reconciled with the fact that on August 9 he could not figure out what he was looking at. In Mr. Sarson's submission a cocaine trafficker would have had no difficulty distinguishing between crack cocaine and cocaine hydrochloride or a brick form of cocaine hydrochloride and a loose powdery form.

[474] I infer that the Shields/Field conversation was about two different packages of cocaine hydrochloride. Because the difference between crack cocaine and cocaine hydrochloride is obvious to the eye – having heard St. Vail's evidence, the difference is something I am able to discern from the photographs taken of the cocaine and crack seized from 1980 St. Margaret's Bay Road – I am satisfied a seasoned drug trafficker would be able to distinguish cocaine and crack in a visual inspection. The same is not necessarily true where there are two packages of cocaine hydrochloride. I do not know what information Kyle Shields was given about the product when he took possession of it that would have enabled him to figure out which package was his. The less information he had, the more he would have needed to ask for Field's help.

[475] What Shields and Field were not discussing was cannabis marijuana. Sgt. Vail testified about the consistency of cannabis marijuana. Derived from a plant, it is the bud portion that is sold. It can be easily "pieced off", not broken off.

[476] I find based on Sgt. Vail's evidence and my own observation of the exhibits seized from the stash location that Shields' question to Field could not have been about cannabis marijuana. The descriptors he used are not descriptors that can be applied to marijuana. If Shields was trying to determine which of two packages of marijuana was his, I would expect different terminology to have been used.

August 12 (Shields and Field and Shields/MacInnis)

[477] Fairly significant debt is the subject of intercepted communications on August 12. At 11:19:59 hours, Kyle Shields and John Field had a discussion about the value of the deck construction in relation to what I infer to have been debts owed. (*Session 1785*) It is not clear to me what the payment/work-in-lieu-of-payment arrangements were to have been but the call reveals that Shields and Field

were plainly not satisfied. The deck construction isn't completed yet and the workers have not arrived for the day. It is agreed that Field will let Shields deal with "him" because he knows him and Field doesn't. Murnel, that is, Ryan MacInnis, is mentioned, as is a debt of one thousand dollars owed to Shields by MD.

[478] Shields then had a conversation with Ryan MacInnis at 11:35:46 hours in which he advised MacInnis that he had just talked to Field. (*Session 6225*) Shields lays out how the debt retirement is going to go. He talks about the thousand dollars that "MD" owes him. He indicates he is giving MacInnis "four grand" and that there will be no negotiations with "Mike" who has owed him a thousand dollars for a year. The "two" that is to be taken off MacInnis' debt will reduce it from "eleven six" to "nine six plus whatever you do today." MacInnis indicates he and his construction crew, whoever they are, will be finishing off the Field deck that day.

[479] Asked to assume that the amounts referred to in Session 6225 are \$11,600 and \$9,600 and that what was being discussed were drug debts, in Sgt. Vail's opinion the intercepted Shields/MacInnis discussion could be consistent with cannabis marijuana in pound and multi-pound purchases and based on "fronting" a significant amount of the drug. Sgt. Vail testified that the debt amounts discussed in the call would not be consistent with 30, 40, or 50 gram purchases of cannabis marijuana. I do not find there is anything in the intercepts to indicate a trade in pound and multi-pound amounts of marijuana. As I have noted, the intercepted communications reference numbers such as 5, 8, 9, 10, 20, 30, 40, 50 and 70 for the orders placed and filled.

[480] In a subsequent call with Field on August 12, Shields reported to Field how matters have been resolved with MacInnis. (*Session 6231*) Shield expects MacInnis will be out to see him tonight, which is what MacInnis indicated when they spoke. He tells Field that MacInnis is "probably gonna to bring me another four or five anyway tonight..." I infer that to be a reference to four or five thousand dollars.

[481] I find the amounts being discussed are not consistent with debts associated with cannabis marijuana whereas they are consistent with cocaine.

[482] The August 12 calls (*Session 6225 – Shields/MacInnis and Session 6231 Shields/Field*) like the July 28 call Kyle Shields had with Ryan MacInnis where MacInnis told him: “I’ll probably chuck ya another two or somethin’ and then I’ll be pretty much fuckin’ caught up, right”, were conversations about significant amounts of money. I find these large amounts to be inconsistent with a trade in marijuana considering how the product being sold is quantified – as “minutes” - throughout the intercepts.

[483] Also on August 12, Shields wants Field to have “two things” ready for him. (*Session 1897, 12:42:21 hours*) I find the guarded reference to “two things” is consistent only with cocaine, cocaine I infer that Shields was asking Field to have ready by “stepping” on it. “Two things” is a description that evokes packaged, adulterated cocaine. The stash location contained everything necessary for Field to adulterate cocaine and package it – cocaine, a cutting agent, a grinder, scales, a hydraulic press, and packaging.

August 19 (Shields and JB /Shields and CM)

[484] On August 19, JB is once again looking for “minutes” from Kyle Shields. (*Session 7170, 12:08:46 hours*) JB wants “seventy total.”

[485] Shields needs to meet with Field to fill the JB order. He also arranges to re-supply C . (*Session 7184, 12:18:31 hours*) CM wants only “five minutes”; explaining that he is going “right to cottage country and I ain’t bringin’ that down to the fuckin’, you know what it’s like.”

[486] CM does not want to take too many “minutes” with him. Asked to assume the conversation is actually about cocaine hydrochloride, Sgt. Vail testified that CM’s comments were consistent with someone not wanting to have a larger amount of the drug with him due to the risk of section 5(2) *CDSA* charges – possession for the purpose of trafficking. Sgt. Vail noted that five “minutes” could be a personal use amount. Sgt. Vail testified that individuals who are “deeply entrenched in the drug culture” are well aware of this risk and the fact that sentences for Schedule I drugs are more severe than for Schedule III drugs.

[487] Cocaine, being a more expensive drug than cannabis marijuana, also represents a more costly loss if something goes awry.

Defence Arguments about Session 7162 on August 19

[488] Session 7162 on August 19 is a call between CM and Kyle Shields with CM looking for "...a handful of somethin' just for us 'til tomorrow night or somethin', right?" Sgt. Vail agreed that "a handful" is not how cocaine or crack cocaine would be discussed. This, says Mr. Sarson, muddies the waters. I don't find it does. It is simply consistent with Shields being a multi-commodity dealer, as indicated by other evidence from the intercepts.

August 20 – Session 7248 (Shields and Davidson)

[489] In a call with Kyle Shields after her car accident, Davidson told Shields that she's "got five or six for ya right now. And, I still got ten... I'm gonna give you that, what I got left. And, then I'm gonna give you...that...and then I'm gonna pay you..." Davidson went on to tell Shields she was "gonna be a little bit short. But...I'll get that to you as soon as this fuckin' calms down."

[490] The Crown says what Davidson had "left" was product not money and that Davidson was talking about giving product, that is, cocaine, back to Shields.

Defence Arguments about Session 7248 on August 20

[491] Mr. Sarson says it is unclear whether it was money or product Davidson was talking about in Session 7248. She did say "I'm gonna pay you..." Clearly, whatever it was, says Mr. Sarson, it was something that was not seized by the police. Mr. Sarson asks, what is the basis for inferring that what is being discussed is cocaine – the same substance the police seized from Davidson's car – and not some other substance not found by police investigating the accident? Mr. Sarson says, this call cannot support the inference that Davidson was talking to Shields about cocaine he had supplied to her that she was going to give back to him.

[492] Examined closely, Session 7248 indicates that Davidson intended to "give" Shields what she had left and then she was going to "pay" him. She also told Shields she had something – "it" – in a safe place as she fears a police raid of her home in the wake of her accident. (Davidson discloses that "it" is off-site when Shields asks: "...where do I gotta come? Where you just at your place?") The intercepted communications between Shields and Davidson on August 20 and the

Shields/ST texts on August 31 (*see paragraph 124 of these reasons*) satisfy me that the substance being obliquely referred to was cocaine. Nothing else explains why it was so important for Davidson to tell Shields about the “shit” the police seized from her car (*Session 7248*) and reassure him that she will make good notwithstanding the loss of product.

August 21 (Shields and MacInnis)

[493] “Minutes” were discussed by Shields and MacInnis on August 21 with MacInnis texting Shields to ask: “U got that for me I got that for u.” (*Session 7427*) Again the amounts were consistent with what is heard from other intercepted conversations: Shields has 50 to 60 “minutes” on hand. (*Session 7433*)

August 27 (Shields and MacInnis)

[494] An intercepted communication on August 27 between Kyle Shields and Ryan MacInnis indicates to me that Shields had product on hand that was measured by weight. The point was pressed by Defence counsel that what was occurring could as easily have been a process of counting something but I find this was not the case.

[495] On August 27, at 13:16:07 hours, Shields called MacInnis. (*Session 7819*) MacInnis wanted to know if Shields had anything at his house “right now?” “Bridgewater” wants fifteen. At first Shields thinks he only has “maybe like five minutes” but there is a pause as he checks. After a short period of empty air, Shields reports there is “eighteen”.

Defence Submissions about Session 7819 on August 27

[496] Mr. Sarson submits that weighing is not the only inference to be drawn from Session 7819 as Shields could have been counting something during the pause. He observes that the police never tested the scale seized from Shields’ residence to see if it was working. It does not make sense to me given Shields’ active business dealings that he would have only had a non-functioning scale. I find he was weighing the product he had on hand, determining there were eighteen “minutes” he could supply to “Bridgewater”. Nothing in the intercepts indicates to me that the

references to “minutes” were references to something that could be counted, like pills, or packets.

[497] The Defence made submissions about another aspect of Session 7819, a discussion between Shields and MacInnis about a debt which the Defence says is inconsistent with Sgt. Vail’s descending trafficking hierarchy of Field-Shield-MacInnis. Shields owed MacInnis “thirty-four”. MacInnis proposed that Bridgewater’s “eighteen” come off the “thirty-four” resulting in a new balance for Shields’s debt. Mr. Sarson says it does not make sense that MacInnis would be supplying Shields and there is nothing in the evidence to explain why he would do so. However it is very apparent that Shields and MacInnis had a close friendship and business relationship and interacted on a peer-to-peer basis. I do not find it incongruous that MacInnis may have “fronted” product to Shields at some point.

September 1 - Session 8267 and September 5 – Session 2014 (Shields and MacInnis)

[498] In a telephone conversation on September 1 with Ryan MacInnis, Shields indicated he had heard the “bad news” about MacInnis’ arrest. (*Session 8267*) When he asked MacInnis, “How bad was it?” MacInnis told him: “Ah, fifty.” Shields wants clarification: “The one...what I give ya? MacInnis confirms it was and Shields sounds frustrated, telling MacInnis: “__you don’t fuckin’ shit where ya eat. I’ll talk to ya when you get here you fuckin’ dummy.”

[499] On September 5 (*Session 2014*), which I discussed earlier in these reasons, Shields reassures MacInnis about what he can expect the consequences will be – federal time of two years. The Crown says this is an indication that Shields was aware that MacInnis’ criminal liability included cocaine, which was seized from his residence, along with cannabis marijuana, an awareness in the Crown’s submission that came from the fact that Shields supplied the cocaine MacInnis was caught with.

Defence Arguments about Session 8267 on September 1 and Session 2014 on September 5

[500] The “fifty” referred to by MacInnis in Session 8267 is a mystery. Nothing matching this description was seized from MacInnis’ residence. Mr. Sarson

submits it is equally plausible that the meeting Shields and MacInnis had on September 1 is when Shields learned that the search of MacInnis' home turned up cocaine - "I'll talk to ya when you get here...". Mr. Sarson submits that Shields as the supplier of MacInnis' cocaine is not the only rational inference for Shields discussing the issue of penalty with MacInnis on September 5.

[501] I have been unable to determine what Ryan MacInnis meant when he told Kyle Shields the "bad news" was "fifty." And while it is plausible that Shields learned that police seized cocaine from MacInnis when they met on the evening of September 1, one thing can be said about MacInnis' use of "fifty" to answer Shields' question: Shields knew what he meant. Shields seemed to understand immediately what MacInnis was talking about. It is also apparent that the news of MacInnis' drug bust was significant to Shields and led to a re-tooling of their business relationship and the introduction of "Bridgewater" Pat into the mix. Notwithstanding MacInnis being a "fuckin' dummy" in Shields' eyes, they were able to continue a lucrative trade, as subsequent intercepts indicate. Session 8267 taken by itself is a somewhat opaque piece of evidence but, as I indicated earlier in these reasons, the evidence is to be considered as a whole and not in isolated fragments.

[502] Similarly, Session 2014, an intercepted conversation between Shields and MacInnis on September 5, is obscure. The debt discussion on this occasion, which Mr. Sarson says doesn't make sense, is unintelligible to me. This is the call that posed problems for Sgt. Vail because it appeared to him that 30 "minutes" mentioned in the call by Shields only cost \$700 as that is how much the debt went up after the referenced transaction. Mr. Sarson says this shows that the coded term "minutes" cannot have meant grams.

[503] I have not found it possible to make sense out of every intercepted conversation. The participants in the calls were obviously very familiar with each other and able to communicate using coded terms and guarded language that, in some instances I have found impenetrable. However all the pieces do not have to fit for me to conclude that the only rational inference supported by the whole of the evidence is that the controlled substance described in terms of "minutes" throughout the intercepts was cocaine.

Defence Argument about BBM Message at 19:01:24 UTC on September 5

[504] Mr. Sarson submits that in a Shields-to-MB BBM message: “Ya hungry for seeds and money”, “seeds” is a term associated with cannabis marijuana not cocaine. The inference to be drawn is that Shields was referring to marijuana in this message. Mr. Sarson points to this as another communication that should be seen as undermining the Crown’s case that Kyle Shields was trafficking in cocaine.

[505] However, once again, it is a rational inference that Shields did not traffic in just one substance. It is notable that the term “minutes” is not used in this communication.

September 9 – Session 8991 (Shields and MacInnis)

[506] In an intercepted conversation on September 9 (*Session 8991*) between Shields and MacInnis it was agreed that Shields would have “fifty minutes” ready for MacInnis. He was told by Shields: “...just make sure you got enough for that and somethin’ to take a little off.” MacInnis replied: “Oh, I got, what I got, I got last time plus some, so don’t worry about that.”

[507] I find that Shields was telling MacInnis to have enough money to pay for the fifty “minutes” and pay down some debt as well. This once again indicates a fairly significant amount of money will be involved. The debt gets mentioned when Shields and MacInnis have a telephone conversation later in the day. (*Session 9070, 17:48:26 hours*) The discussion is guarded. I infer there is a debt involved as MacInnis says: “...I’m payin’ for last week’s, this week, and there’s extra from the last week’s one.” He later comments that, “It’s goin’ down, that’s all that matters, right?” Shields is happy as long as “it’s” going down; he is in “no big, big panic...”

[508] Shields tells MacInnis he is going to “take off one fifty.” He later tells MacInnis he doesn’t “give a fuck if it’s one fifty at a time. Eventually it’ll get... down to nothin’.”

Defence Submissions about Sessions 9062, 9065, 9067, 9070 on September

[509] Sessions 9062, 9065, 9067, and 9070 on September 9 led to another calculation by Sgt. Vail of cocaine being transacted at \$43 per gram. He arrived at this pricing from the references in Session 9070 to “thirteen hundred” and “thirty minutes.” Sgt. Vail remarked that 30 grams for 1300 dollars is incredibly cheap cocaine hydrochloride but there was no other drug this would be consistent with in the Halifax Regional Municipality.

[510] \$43 per “minute” or gram is very similar to the \$43 per “minute” Shields discussed with JB in Session 3440 on July 22. Again, this is a very low price for a gram of cocaine. Mr. Sarson correctly notes there is nothing in the intercepts to distinguish these low-grade minutes/grams. But other conversations may well have occurred as there is plenty of evidence that Shields often met with customers and was on familiar enough terms to have them come to his house.

October 1

[511] Debt collection talk is found in calls involving CH, Kyle Shields, Ryan MacInnis, and John Field on October 1.

[512] On October 1 at 14:38:49 hours, (*Session 11612*) Shields called a number subscribed to CH, 7001 Mumford Road, Unit 135. He’s been looking for CH, telling him: “Come outta the wood work, did ya? Ya know I’ve been lookin’ for you for a long time, [CH].” CH knows this.

[513] Session 11612 and other calls on October 1 and 3 establish that Shields was looking for CH to pay him some money that he owes. In Session 11612 as Shields waits for his call to be answered, an exchange can be heard between Shields and another man. He says to the other man, whom I find to have been Ryan MacInnis: “I might get you to go see him for, just grab the money for me.” He also says to MacInnis: “But ya can’t get in trouble for just havin’ money.” (In earlier calls following his August 30 arrest, MacInnis has mentioned keeping a low profile and avoiding trouble.) Once CH has answered the call, Shields says he is going to get “[RM] to come meet ya and grab that.” The “that” has just been described by CH: “...we got five now just ‘cause that was all. It’s all there and they just, they’d only let five...in cash go today. ...I can get another five, say Monday, Tuesday and then we’re done.”

[514] At 15:53:12 hours, Shields had a call with John Field. (*Session 11623*) I infer from the call that Shields was letting Field know about the debt collection from CH. Shields says he “just run into buddy” and “got half of it anyway.” He goes on to tell Field, “...supposedly the other...I believe him too, the other half supposed to be Monday or Tuesday at the latest” which is precisely what CH had told him in Session 11612 when he talked about getting the other five. Shields says: “...I got the half...” which is better than he expected: “Well bro it’s five I wasn’t expectin’, right?” Shields tells Field, “...I just got buddy comin’ here bringin’ it now...” which I infer is RM whom he had dispatched to make the collection from CH.

[515] Subsequent to this call, MacInnis collects the debt payment from CH and delivers it to Shields. (*Sessions 11626 and 11631*) and Shields contacts Field to come for the money. (*Session 11646*) He tells Field “I’d rather just get rid of that, right?” I infer he is referring to money that MacInnis collected from CH and brought to him. The only reasonable inference is that the “five” paid by CH is \$5000 on his debt with Shields. I find this is not cannabis marijuana money; as with other large numbers mentioned in the intercepts, it is an amount consistent only with cocaine.

[516] Having made a significant payment on his debt CH is eligible to be re-supplied. Shields calls Field at 18:02:16 hours on October 1 (*Session 11653*) and wants to know if, on his way out see Shields, he can “run into [CH] for like, five minutes?” Field doesn’t have “that right now.” “It would be nice” says Shields but it’s not a problem. Field is prepared to “double check. I’ll double check with somebody.”

[517] Given the evidence I heard from Sgt. Vail about pricing and profit, I find that Shields and Field cannot have been referring to five grams of cannabis marijuana for CH nor do I find it to be a reasonable inference that they were talking about 10 times five grams of marijuana or 50 grams of marijuana. Fifty grams of marijuana does not represent how marijuana is measured for sale: Sgt. Vail testified that in larger amounts the measurement is ounces and pounds.

October 3

[518] On October 3, Shields has a telephone conversation with RC (*Session 11787*) in which Shields tells RC he owes him for “five minutes” but doesn’t have that “right now.” CH’s debt also gets mentioned. RC comments: “He...got ahold of you and fuckin’ things got, things are half-way there.” That is consistent with the status of the debt that was partially paid by CH on October 1.

[519] The balance of the CH debt does get paid as promised. On October 3 Shields arranges to collect it from CH because it is raining. (*Session 11902*) Shields then calls Field and says he saw “buddy” and would “appreciate it if you’d come out.” (*Session 11924*) Once again, Shields wants to off-load the money, which based on the intercepts, was the further \$5000 that CH owed. CH’s debt of \$10,000 represents a significant amount of debt. I am satisfied it could not have accumulated as a result of CH being “fronted” marijuana.

[520] The inference that Shields’ business with CH was cocaine and not marijuana is also supported by the small amounts of “minutes” discussed: on October 3 it is “five minutes.” On October 5, it is “ten minutes.”

October 5 – Session 11992 (Shields and CH)

[521] CH was back in business as a customer of Shields once the debt was paid. On October 5, Shields texted CH to ask “How many mins u thinking” CH responded: “What you said 10mins and we see how quick it goes id say by next weekend if not sooner im giving heads to few folks already” (*Session 11992*) I infer from this reply that CH will be distributing the “minutes” he gets from Shields and has identified some interested downstream clients.

[522] Sgt. Vail was asked to assume that “10 mins” refers to 10 grams of cannabis marijuana and then he was asked to assume it referred to 10 grams of cocaine and give his opinion on CH’s statement “...see how quick it goes...”

[523] In Sgt. Vail’s opinion, if the discussion is assumed to be about cannabis marijuana, purchasing the 10 grams and then re-trafficking it would produce minimal profit. Cannabis marijuana cannot be “stepped on” so it is not possible to adulterate it, expand the volume, and then sell it off for a profit. If the purchaser got the 10 grams of marijuana for \$7 a gram and then re-sold it for \$10 a gram, he would, in Sgt. Vail’s words, make a “whopping \$30 in profit”.

[524] Cocaine hydrochloride on the other hand can be “stepped on” and resold for a significant profit. It was Sgt. Vail’s opinion that cannabis marijuana can be moved quickly but there is no profit to be made at the amounts being discussed.

October 7 – Session 12499 (Shields and CH)

[525] On October 7, Shields was wondering if CH wanted “20 mins?” (*Session 12499, text*) CH texted Shields back: “Its up to you I don’t still have someone taking half right off the bat” (*Session 12502*) Shields acknowledged this: “K” (*Session 12504*) Again this indicates that whatever CH was getting from Shields he would be re-distributing. I infer that Shields was “fronting” CH “minutes” of cocaine and not a small amount of cannabis marijuana.

October 10 – Sessions 4207 and 4211 (Shields and Field)

[526] On October 10, at 15:25:25 hours, Shields told John Field he was “Waitin’ on old turtle man” which I take to be a reference to Field keeping him waiting again. Field replies: “Ah, yeah. I forgot that, I didn’t grab that yet, either...I didn’t get down there yet. Did you wanna pick that up?” Shields tells him: “Well, I don’t need that. I just, thirty minutes for my regular dude.” Shields and Field try to coordinate a time to meet up. (*Session 4207*)

[527] At 15:50:16 hours, (*Session 4211*) Field wants something for “Jerome” that Shields doesn’t need for himself but offers to pick up. He explores in guarded language what it is Field is looking for: “...you’re talkin’ about the stuff that we normally use, right? Like the stuff I buy, the stuff I buy at like, the, at the workout shops?” That is what Field wants. Shields says he “can stop by there and get, its open.” He wants to know if Field wants him to do it now and Field does, if he can. “Yeah, I can”, says Shields, “but...are you gonna be ready to meet me?” Field says he is.

[528] I find there are two factors that point away from this item being a legitimate work-out product: (1) the guarded language; and (2) Shields’s statement to Field: “...you’re talkin’ about the stuff we normally use, right?” There is no evidence that Field and Shields have been using supplements or even working out together. The statement suggests that what is being discussed is a cutting agent, a product used to

step on a commodity like cocaine hydrochloride. I infer the product being discussed is caffeine.

[529] I also infer from this intercepted conversation that Shields used caffeine himself as a cutting agent. In the call he told Field: "...I can pick it up for you, but I don't, I don't need any right, for me." (*Session 4211*) The "stuff" he and Field "normally use" Shields did not need at that time. Field's response to this was: "No, I know. I was just thinkin' for Jerome..."

The Search of [...] Sapphire Crescent, Lower Sackville

[530] Seizures made by police on October 11, 2011 from the basement area of [...] Sapphire Crescent included: money, including a bundle of mixed denominations stored in a Nike box; other mixed denominations – mostly 20's; a digital scale; a silver-coloured spoon that was analyzed to have cocaine and caffeine residue on it; another small digital scale that was analyzed to have cocaine and caffeine residue on it; 2 silver-coloured spoons and a straw, all analyzed to have cocaine and caffeine residue on them; and a yellow box of ziplock bags and a 1" x 1" blue "dime" bag.

[531] Earlier in these reasons I described what was seized from 1980 St. Margaret's Bay Road. There is ample evidence that cocaine was being "stepped on" at the stash location and that the adulterating product was caffeine.

[532] The seizures from the search at [...] Sapphire Crescent are evidence that goes into the mix when assessing if the Crown has proven beyond a reasonable doubt that Kyle Shields was trafficking in cocaine. By itself, the [...] Sapphire Crescent seizure evidence would not be sufficient but taken with all the other evidence, it is a compatible piece of the puzzle.

[533] Other relevant evidence on this issue includes Suzanne Davidson's August 16 car accident in Truro. It is to be remembered that Davidson called Shields on August 20 to report that she had had an accident after which the police had searched her car and "found some shit." I find there was no reason for Davidson to be calling Shields about this except that she knew it was relevant information for him to have. As I have already said, the only reasonable inference to be drawn

from a subsequent text exchange between Shields and ST is that Shields had an economic interest in the “shit” the police found in Davidson’s car.

[534] The “shit” found in Davidson’s car was cocaine in three little ziplock bags. No cannabis marijuana was found.

[535] I know from the intercepted communications that Suzanne Davidson was headed for Truro on August 13 at 21:13:16 hours. (*Session 6361*) She arranged to meet Shields on her way. There was ample time before the car accident on August 16 for her to have sold the product he supplied and put money aside to pay him. The fact that only a small amount of cocaine was found by police is not inconsistent with Shields as its source.

Drawing the Inference that Kyle Shields was Trafficking in Cocaine

[536] The intercept evidence I have reviewed and the use I have made of Sgt. Vail’s expert opinion about that evidence as noted, the Davidson accident, notably its significance to Kyle Shields, and the seizures from [...] Sapphire Crescent and Apartment 12A at 1980 St. Margaret’s Bay Road considered together support only one inference – that Kyle Shields’ illegal transactions involved cocaine. The intercepts I have reviewed and the inferences I have drawn from them establish that what Shields did with the cocaine constituted trafficking.

[537] Kyle Shields’ drug trade may not have been exclusively in cocaine, but that is immaterial. I find the Crown has proven beyond a reasonable doubt that Kyle Shields was trafficking in cocaine in the period of June 30 to October 11, 2011. I am satisfied this is the only rational inference to be drawn from the evidence. (*R. v. Griffin*, [2009] S.C.J. No. 28, paragraph 33)

[538] I will now move on to discuss “Bridgewater” Pat. What was Kyle Shields supplying to him and who was he?

PART V – “*Bridgewater*” Pat

The Intercepts

August 9

[539] The first evidence of Kyle Shields having a telephone conversation with a man the Crown alleges is Patrick Scott occurred on August 9, 2011. (*Session 5861*) The call was from 902 789 [...], a number subscribed to by “Patrick Scott, 37 Convoy Avenue, Halifax”. The caller tells Shields: “This is Pat.” He has got Shields’s number from Ryan MacInnis, calling him by his nickname “Mermal.” Shields laughs and says: “Bridgewater Pat?” The caller responds: “A lot further but, yeah, that’s the general direction. That’s me.” Shields establishes that the caller has been to his house before and the caller describes himself, “Yeah, the big, hairy one, yeah.”

[540] “Bridgewater” Pat wants to meet with Shields probably the next day and connects this to the fact that “buddy’s gonna be fuckin’ ready to come up and meet me...” “Bridgewater” Pat tells Shields his buddy is “...comin’ up tomorrow whenever. So when, whatever’s a good time for you is what time I’ll be talkin’ to ya.” There is some discussion about where and when they will meet with “Bridgewater” telling Shields: “...I’ll give ya a call probably lunchtime of somethin’.”

[541] From this August 9 call I infer a connection between “Bridgewater” Pat being able to meet up with Shields and the impending arrival of his buddy who is “comin up tomorrow whenever.”

[542] “Bridgewater” Pat’s ongoing interest in acquiring product from Shields becomes evident in subsequent calls and texts. The calls and texts, with the exception of some texts on September 5, are made from a number – 902 789 [...] - subscribed to by “Patrick Scott, 37 Convoy Avenue, Halifax, N.S.

August 27

[543] Intercepted communications on August 27, 2011 between Ryan MacInnis and Kyle Shields are useful in understanding the narrative of “Bridgewater” Pat’s arrival on the scene. I reference them to set the stage and explain how it is that “Bridgewater” Pat got onto the intercept/surveillance radar.

[544] At 12:26:08 hours Ryan MacInnis texted Shields wondering whether Shields was coming to town (*Session 7806*) and asking Shields “U got any now call me.” (*Session 7815*) At 13:16:07 hours, Shields called MacInnis. (*Session 7819*)

[545] MacInnis asks Shields if he has anything at his house “right now” because, he says, “Bridgewater” wants some product. MacInnis wants to know if “Bridgewater” can “stop by and grab ten or fifteen” from Shields, because he, that is, “Bridgewater” is going up to Bridgewater today.

[546] Shields wants to go to the gym as he had planned. He doesn’t want to wait for “Bridgewater.” He wants MacInnis to tell “Bridgewater” to call him and says, “I’ll meet him at the Sports Stadium at the gym or somethin’” After pausing to check his inventory, Shields tells MacInnis he will give “Bridgewater” “eighteen...” (*Session 7819*)

[547] MacInnis can’t say if Shields’ suggestion to have “Bridgewater” meet him at the gym will be feasible. The call ends with MacInnis saying to Shields that he will tell “Bridgewater” to call him “right now.”

[548] At 13:21:40 hours on August 27, that is, only minutes after the MacInnis/Shields’ call, Shields received a call from 789 [...], subscribed Patrick Scott, 37 Convoy Avenue. (*Session 7820, Exhibit 118*) Shields wants to know if the caller is “headin’ out to Sackville?” “Bridgewater” Pat says he can and Shields suggests that he meet him at the “Sports Stadium”. When he asks “Bridgewater” Pat if he knows where that is, “Bridgewater” Pat says: “Yeah, where your gym is?” Shields confirms that is the location and says: “Yeah. Just meet me there buddy. Just gimme a call when you’re there. I’ll just keep checkin’ my phone every five, ten minutes.”

[549] At 14:26:27 hours, there is a text from “Bridgewater” Pat to Shields: “on cobequid” (*Session 7825, Exhibit 118*) At 14:27:50 hours, a response from Shields: “K” (*Session 7826, Exhibit 118*)

[550] I find that the August 27 call to Shields, Session 7820, and the subsequent text, were made by “Bridgewater” Pat following up on the call Ryan MacInnis and Kyle Shields had had where “Bridgewater” Pat’s interest in being supplied with fifteen “minutes” was discussed.

[551] “Bridgewater” Pat becomes more of a presence on the intercepts and in conversations between Shields and Ryan MacInnis after MacInnis’ arrest just three

days later on August 30. Throughout the calls and texts between Kyle Shields and “Bridgewater” Pat the coded term “minutes” is used.

September 5

[552] A narrative of the calls and texts between Kyle Shields and Ryan MacInnis on September 5, shows how “Bridgewater” Pat comes into focus in the supply and redistribution chain. In a call with Shields on September 5 at 14:24:59 hours (*Session 8639*), Ryan MacInnis tells Shields that he has some money for him, “...probably closer to three by the time I’m said and done.” He is trying to get hold of “Pat”, so “he could give me some too.” Shields is going to the gym and to eat so he’ll “probably be three hours” by the time he can come out and collect the money.

[553] At 16:08:19 hours on September 5, (*Session 8658*) MacInnis texts Shields to tell him, as I interpret the text, that he is waiting for Pat to stop in and then MacInnis will get him to call Shields. MacInnis is going to give Pat something - “the flow” - to give to Shields and will text Shields to tell him the quantity ‘ “how much” – when he sees Pat. I find that MacInnis is talking about money. This follows from the Session 8639 call.

[554] Shields texts MacInnis back. (*Session 8659*) He wonders how long before MacInnis sees Pat. MacInnis isn’t sure how long. (*Session 8663*) He wants to know if Shields is “good for me” and when he is told “I got something here”, (*Session 8665*) says, “Cool cause im out” (*Session 8666*)

[555] Kyle Shields and Ryan MacInnis have a further telephone conversation on September 5 at 19:07:51 hours. (*Session 8696*) I infer from it, in the context of the calls and texts, that “Pat” has arrived at MacInnis’ and is being dispatched to Shields’ home. MacInnis tells Shields that he has given “him” (Pat) “two for now.” MacInnis will have some more when “he” (Pat) “comes back again.” Shields wants to know what he should give “him” when he arrives. MacInnis suggests “...whatever he wants. Thirty or forty or somethin’, fifty.” Shields would “like it to start goin’ down” which I infer to be a debt. I infer that the discussion relates to “fronting” and that a debt has built up that Shields wants reduced. I also infer that MacInnis, the heat bag, is relying on “Pat” to assist him carrying on his business with Shields while he lies low after his August 30 arrest.

[556] MacInnis had thought that his visitor, whom I infer to be “Pat”, would have had more money with him but he didn’t. Shields is, as usual, unperturbed by this and says it “sounds good” to him. He will text MacInnis to tell him “what I hook him up”, which I infer is an indication that he will text MacInnis to tell him what he decides to “front” to “Pat.”

[557] Sgt. Vail testified about this call. In his opinion the call is consistent with individuals being in debt to someone who supplies a controlled substance. Assuming that 30, 40, or 50 refers to grams of cocaine, in Sgt. Vail’s opinion “two” would be two thousand which is consistent with the purchase price of 40 grams of cocaine. I find as a fact that 40 grams of cocaine is not a personal use amount. According to Sgt. Vail’s evidence even 10 grams of cocaine would not be consistent with personal use. I accept his testimony that a heavy user of cocaine might consume an “eight ball”, that is 3.5 grams of cocaine per day.

[558] After the phone call with MacInnis at 19:07:51 hours, Shields then exchanges five texts with a person using a mobile phone 999 3563 subscribed to Ztar Mobile Inc with an address in Texas. These start at 19:20:09 hours with Shields receiving a text. He asks who it is and is told “Pat.” (*Session 8701*) “Pat” clarifies his identity as “Bridgewater” Pat in a text at 19:22:55. (*Session 8704*) Shields tells “Pat” he is home and to “stop by.” (*Session 8705, 19:23:15 hours*)

[559] This, I find, is the follow up to what Shields and MacInnis had been discussing previously.

[560] A little while after this, at 19:50:17 hours, Shields had another telephone conversation with Ryan MacInnis. (*Session 2014*) He refers to him by his nickname, Mermal. It is a conversation that covers three main topics: what Shields gave the person MacInnis sent over to him – “Bridgewater” Pat, and where the debt stands; MacInnis’ recent arrest, who might be responsible for “ratting” him out to the police, and what he faces in terms of consequences; and how they will handle the business end of things going forward.

[561] Shields and MacInnis conclude Session 2014 by talking about “Bridgewater” Pat. MacInnis tells Shields: “...I wouldn’t send nobody there...that wasn’t. You already know buddy. You already know he’s solid, you know what I

mean...So, that's the only guy I would send there, right." Shields observes in response: "Well it's like this: I would know, right. If somethin' bad were to happen...he would be the only guy here, today, right?"

[562] MacInnis tells Shields that "he'll probably be back. He'll probably have to give ya a call in a couple more days there and fuckin' we'll gear you up again..."

[563] Session 2014 indicates that "Bridgewater" Pat has been re-supplied by Shields and is "solid", that is, trustworthy, an essential character reference in drug trafficking circles.

September 12

[564] On September 12, Shields and MacInnis were again in touch about "Bridgewater" Pat. At 21:05:27 hours (*Session 9444*) MacInnis advises Shields that "fuckin' what's his name just called ya." Shields hadn't recognized the number and says: "Oh, was that Pat that called me?" I know from the earlier calls that "Bridgewater" Pat has Kyle Shields's phone number. MacInnis tells Shields he will tell "him" - and I infer that by "him" he means "Pat" - to call Shields back. He tells Shields: "Just answer the phone."

[565] The next call happened right on the heels of Session 9444. The previous call between Shields and MacInnis started at 21:05:27 hours and lasted 1 minute and 14 seconds. It therefore would have ended at 21:06:41. At 21:06:54 hours, Shields got a call from the "Patrick Scott" mobile. (*Session 9445*)

[566] Shields tells "Bridgewater" Pat that he's at home and asks him if he wants to "stop out" or "wait 'til tomorrow?" It's no problem for "Bridgewater" Pat to "stop out." Shields tells him: "...I got somethin' there. Might not be as much as before, but I mean, you can always come back tomorrow or somethin', right?" But he's got something, he tells "Bridgewater" Pat: "Definitely somethin'. _____ probably like ten or fifteen minutes or somethin' there, anyway." As for "Bridgewater" Pat coming by, Shields says: "...I'm just home, man. You know what to do." "Bridgewater" Pat expects to be there in an hour as he's "traveling."

[567] I find that these intercepts establish that the caller using the Patrick Scott mobile is "Bridgewater" Pat.

[568] A little less than 30 minutes later, “Bridgewater” Pat texted Shields (*Session 9446*) to advise he was going to be later than he thought and asking if Shields will be home “tomorrow?” “Bridgewater” Pat is stuck behind a dump truck on the highway, driving under the speed limit. (*Session 9447*)

[569] The next series of texts, from 21:37:13 hours to 21:39:05 hours (*Sessions 9447, 9448, 9449, 9450*) indicate that “Bridgewater” Pat and Shields were resolving to meet up the next day. At 21:43:18 hours, “Bridgewater” Pat wonders if Shields will be up “at 10:30” (*Session 9451*) The idea of meeting that night has a short shelf-life and it is settled that Shields will deliver “it” to “Bridgewater” Pat at his work (*Session 9456*), right “after gym.” (*Session 9459*)

September 13

[570] On Tuesday, September 13, 2011, Shields had three telephone calls with “Bridgewater” Pat and one with John Field. He exchanged a total of eighteen texts: 12 with the Patrick Scott mobile user and 6 with Ryan MacInnis.

[571] At 10:44:26 hours, Shields had a telephone call with “Bridgewater” Pat who continues to use 789 [...] subscribed to Patrick Scott, 37 Convoy Avenue, Halifax. (*Session 9485*) “Bridgewater” Pat has not gone to work. He couldn’t get hold of his boss that morning so he is just “sittin’ around home.” He does not have any transport. Shields tells him: “Well, I can, I’ll bring what I got out there...” He wants to go to the gym first and asks if that is “cool”, which is it, even though Shields says he will be “probably...two and a half hours...” “Bridgewater” Pat is fine with that plan and Shields advises: “...Okay man. Well, I’ll get at ya then as soon as I’m done.”

[572] The next call with “Bridgewater” Pat was quite some time later, at 14:54:27 hours. (*Session 9505*) Shields wanted to know how to find him at home on “Albro Lake in Dartmouth” which I infer means Albro Lake Road in Dartmouth. “Bridgewater” Pat explains to Shields how he can find Albro Lake Road, describing it as “the corner of Victoria and at the Petro Can on Victoria.” He tells Shields: “I’m basically right next to the Petro Can” and suggests that he “just pull in the Petro Can parkin’ lot and gimme a call.”

[573] There is also a discussion about “that five other...” that “Bridgewater” Pat wants. Shields does not have it. He tells “Bridgewater” Pat: “...I only got nine minutes here for ya right now until I...” He’ll have to get it for “Bridgewater” Pat “later on.” Shields wants to know if “the other five thing’s goin’ on Mermal’s or is it goin’ on yours?” It doesn’t matter to “Bridgewater” Pat, he’s “already told him [Mermal] about it.” As it doesn’t matter to Shields either, he tells “Bridgewater” Pat: “I can just give that to you.” “That works out good” “Bridgewater” Pat replies. This is a detail to be attended to later, Shields says to “Bridgewater” Pat: “Whatever. Well, I’ll have to do that later on. But, right now I’m gonna come grab that and drop this off and then we’ll work somethin’ out for later.”

[574] Sgt. Vail was asked about “nine minutes” as a reference to cannabis marijuana. It was his evidence that if the seller had purchased it for \$5 a gram and was going to sell it for \$10 a gram, he was going to realize the paltry profit of \$45. Cannabis marijuana worth \$20 per gram would be an extremely high quality and sought-after product, and I note, would still only net the seller a very small profit. (I find it reasonable to assume a higher quality strain of cannabis would have cost the seller more than \$5 a gram to start with.)

[575] “Nine minutes” as cannabis marijuana does not represent a very profitable drug transaction and all the bother experienced by Shields to get it to “Bridgewater” Pat. I find the September 13 Kyle Shields/”Bridgewater” Pat transaction cannot have been a marijuana transaction.

[576] Kyle Shields had more trouble finding “Bridgewater” Pat than anticipated. At the time of their next call at 15:14:12 hours (*Session 9509*), Shields is lost. He has not been able to find the Petro Can that “Bridgewater” Pat was referencing as a landmark in the vicinity of where he was on Albro Lake Road. Shields passes an Ultramar which “Bridgewater” Pat tells him “is just two blocks up from me, bud.” This helps orient Shields. “Bridgewater” Pat tells him the Ultramar is so close to him that he can walk up there. Shields likes the sound of that: “Well, yeah, bro, do that. I know where that is a hundred percent. And then I’ll just drive ya back home and then I’ll know.” I infer that Shields wants to know where “Bridgewater” Pat lives for ease of future reference.

[577] About three-quarters of an hour later at 15:59:55 hours, Shields had a telephone call with John Fields. (*Session 9517*) He needs to meet with Field urgently – “I need to kinda come see ya right quick, though.” He tells Field he is “pretty close now. I’m just in Clayton Park.” Field has something to do but says he won’t be long and Shields says he “can meet ya there in twenty minutes if ya want.” Field tells him he’ll “be there in five minutes.” Shields replies: “I’ll be there in like 10, 15 tops.”

[578] At 16:29:25 hours Shields texted “Bridgewater” Pat. (*Session 9525*) He wanted to know if “Bridgewater” Pat was “mobile.” “Bridgewater” Pat responds that he is going to “try and get ahold of buddy” and will get right back to him. (*Session 9526*) Shields is accommodating: in a text at 16:55:58 hours, he says: “If not ill bring it in a bit.” (*Session 9527*)

[579] The only reasonable inference is that Shields was referring to the “five other” he did not have for “Bridgewater” Pat earlier. Shields told “Bridgewater” Pat in Session 9505 he would have to deal with that later. I find that Shields’ call to John Field - needing to come and see him “right quick” - was a supply-run so he could make good on “Bridgewater” Pat’s order.

[580] “Bridgewater” Pat found “buddy” and transport. He texted Shields at 17:01:28 hours to say: “My buddy’ll be here in a half hour...Txt ya when I’m leavin” (*Session 9528*) Shields acknowledged this at 17:09:07 hours. (*Session 9529*) At 17:22:40 hours, “Bridgewater” Pat was texting that he was on his way. (*Session 9532*)

[581] Shields wants “Bridgewater” Pat to “msg” him when he gets to Sackville and he’ll meet him “somewhere.” (*Session 9533, 17:23:07 hours*) About 10 minutes later (*Session 9539, 17:33:13 hours*) “Bridgewater” Pat wants to know where to meet. After an exchange to establish where “Bridgewater” Pat is (*Sessions 9540 and 9541*), Shields directs him to “Boston pizza” (*Session 9542, 17:36:56 hours*) At 17:38:11 hours, “Bridgewater” Pat is on his way. (*Session 9543*)

[582] Shields’ movements on September 13 were subject to police surveillance. Cst. Scott Manning testified there was information on September 13 that Kyle

Shields was going to meet with an individual over in Dartmouth. At 11:40 hours, Cst. Manning saw Shields at the Sackville Sports Stadium. He was known to go there to work out.

[583] At 14:03 hours on September 13 Cst. Gould observed Kyle Shields' BMW at [...] Sapphire Crescent. At 14:58 hours, Shields was in the BMW at Cobequid Road.

[584] Cst. Scott Manning testified that Shields went to the Ultramar on Victoria and Woodlawn. An individual approached the car and got in. Shields and his passenger then drove one block only, to the PetroCan. The passenger was described by Cst. Manning as "a bigger guy, scruffy hair and beard, striped shirt, and a ball cap." He made a detailed description of the man in his notes.

[585] Cst. Manning did not know the man's identity at the time. He did not see anything in the man's hands.

[586] Cst. Manning drove right by the Ultramar and turned on a side street. He parked on Albro Lake Road. He went on foot and observed Shields and his passenger through the window of a building. He was about 75 to 100 feet away. He saw the passenger was out of Shields' vehicle and was walking up Albro Lake Road. He lost sight of him. He did not see anything in the man's hands at this time.

[587] Cst. Manning testified that he recognized Patrick Scott in court as the man he had seen with Kyle Shields on September 13 at the PetroCan. Cst. Manning testified that when the investigators' profile book was being updated with the addition of Patrick Scott's driver's license photograph, he recognized him as the man he had seen at the PetroCan.

[588] At 15:26 hours, Cst. Gould observed an unknown male walking from Victoria Road toward Albro Lake Road and up Albro Lake Road. Cst. Gould was positioned at 106 Albro Lake Road. The man was coming toward him, not walking fast, and on the phone. Cst. Gould described him as: white, heavy set, medium brown hair and a goatee, wearing a ball cap, and dressed in a striped shirt. He identified Patrick Scott as the man he saw. He took a video of the man entering 106 Albro Lake Road.

[589] The man was unknown to Cst. Gould at the time. At some point other investigators identified the man as Patrick Scott and this was passed on to all team members. I will address the issue of identification later in these reasons.

[590] On September 13, Cst. Robert Burton, a 25 year veteran of the RCMP, was part of a surveillance team conducting surveillance on Kyle Shields. At 15:24 hours he observed Shields at the PetroCan on Albro Lake Road. Shields' black BMW was already there when Cst. Burton observed him. Shields was with an unknown male wearing a black ball cap and a striped shirt. It is Cst. Burton's recollection that Shields was inside his vehicle and that the male in the black ball cap was near the vehicle.

September 17

[591] Four days later, on September 17 in a call with "Bridgewater" Pat, Shields wanted to know if he wants to "hook up?" (*Session 10042, 10:15:28 hours*) "Bridgewater" Pat responds: "Oh, yeah. Whenever." Shields asks if he wants to "do just the same as before?" "Bridgewater" Pat does and the amount discussed is "fifteen." "Bridgewater" Pat tells Shields: "Well, I just figured I might as well just do it and then I'll...get from Mermal or whatever. It's easier that way."

[592] Shields offers to get "Bridgewater" Pat, "that other thing" – "...did ya want me to get that other thing for ya too?" But "Bridgewater" Pat indicates he hasn't "grabbed the cash for it yet." There is still time Shields tells him: "Well, I'm not gonna see buddy for another hour anyway. So, if, if you're gonna have the loot for that or whatever, just message me. If ya don't, then I won't bother grabbin' it. But, if you do, I'll get it for ya." "Bridgewater" Pat tells him, "Yeah, cool...I'll...message ya within the next half hour or so."

[593] About an hour later, Shields did get a text message from "Bridgewater" Pat (*Session 10053, 11:19:31 hours*). I infer "Bridgewater" Pat did not have the cash for "the other thing" as he tells Shields: "Just the reg bud" which I take to mean he just wants Shields to get him what he regularly orders.

[594] At 14:16:17 hours, "Bridgewater" Pat texted Shields. (*Session 10090*) He wanted to know if Shields was home.

[595] There is no immediate reply from Shields. Shields discovered soon afterwards that John Field is in Pictou (*Session 10091*) and not available to re-supply him. In the call with Field, Shields expressed urgency, which I find was because he had an outstanding order from “Bridgewater” Pat.

[596] At 14:52:33 hours, not long after the call with Field, Shields had a call from “Bridgewater” Pat. (*Session 10094*) “Bridgewater” Pat is wondering if Shields is around. Shields explains: “Well, I’m just waitin’ for my buddy to get back from Pictou and then, ah, he’s gonna call me. And, as soon as he gets back I’m gonna call you.”

[597] It is clear from this conversation that Shields needs to hear from John Field before he can get back to “Bridgewater” Pat with product for the “regular” order he had placed.

[598] There was some eagerness on the part of “Bridgewater” Pat. At 14:56:44 hours (*Session 10095*) he texted Shields: “I’m just out this way now, should I wait around?” The response of Shields is not entirely clear: “I’d say” (*Session 10096, 14:58:11 hours*) This could be an indication that “Bridgewater” Pat should wait around but I am unsure what exactly it means.

[599] Shields later sent identical texts to “Bridgewater” Pat and RC who is also looking for product: “Ill be good in an hour” (*Session 10168, 18:51:15 hours and Session 10169, 18:51:38 hours*)

[600] At 20:11:12 hours on September 17, Shields and “Bridgewater” Pat were on the telephone. (*Session 10208*) Shields says: “Yeah, I just got ah, ready now.” They talk about where to meet in Sackville. “Bridgewater” Pat suggests where they met the last time “...in the Sobeys parking lot there, Boston Pizza.” Shields does not want to meet there: “No, no not there...just give me a call when you get to Sackville.” I find Shields had “Bridgewater” Pat’s order and the meeting would achieve its delivery.

September 19

[601] Two days later, on September 19, between 14:48:55 and 19:17:12 hours, Shields and “Bridgewater” Pat exchanged eight texts. At 14:48:55 hours,

“Bridgewater” Pat texted Shields: “Hangin out bud, wonderin’ if I could grab that special whenever its good for u” (*Session 10366*) When Shields does not seem to understand the request - he texts “Huh” at 14:50:31 hours (*Session 10367*) - “Bridgewater” Pat texts again: “Wat I got the 5 of...Just letting ya know I’ll grab it whenever good for u” (*Session 10368, 14:51:46 hours*) Shields gets it now, texting: “K coo” at 14:52:12 hours (*Session 10369*) which I infer means “Okay, cool.”

[602] “Bridgewater” Pat texted Shields at 14:52:38 hours (*Session 10370*) to say: “Thanx bud”. The suitable time for Shields is “After supper” (*Session 10371, 14:57:37 hours, text message from Shields to “Bridgewater” Pat*)

[603] At 19:14:14 hours, which would likely be “after supper”, “Bridgewater” Pat texts Shields: “Howdy a make out?” (*Session 10443*) Shields has had a change in his availability, texting: “Be 1st thing tomorrow I got tied up bro” (*Session 10446, 19:17:12 hours*)

September 20

[604] The next day, on September 20, Shields had a telephone call with “Bridgewater” Pat at 19:11:41 hours. (*Session 10525*) “Bridgewater” Pat just got off work. Shields had been to the gym. Shields wondered what “Bridgewater” Pat was looking for, that “five minutes or did ya want the whole thing?” For “Bridgewater” Pat the “five minutes” is “the only thing that’s right, right important.”

[605] Shields realizes he forgot about this. “Ah, fuck, bro. I don’t even think I can do that tonight...I forgot all about it, bro. You shoulda got right at me in the mornin’, bro. If you still wanna do that in the mornin’ literally c-call me right, first thing in the mornin’ and get at me.” He says he could have done “it” today but “that totally slipped my mind, bro.”

[606] “Bridgewater” Pat figured Shields would call him. Shields “just totally forgot” and promises he will “go do that first thing...Be my first goal, soon as I wake up.” The “five special” that “Bridgewater” Pat had wanted on September 19 is delayed another day.

September 21

[607] On September 21, 2011 Shields exchanged 7 texts with “Bridgewater” Pat, had two calls with him, and two calls with John Field. Shields ultimately makes good on the forgotten five “minutes” from September 20.

[608] “Bridgewater” Pat has followed up on a recommendation made the evening before by Shields – he texts him at 11:37:10 hours with a reminder: “Just workin’ bro, sendin a reminder lol” (*Session 10557*) Shields responds at 11:43:57 hours: “Yup I got ya (*Session 10560*)

[609] Shields called John Field at 13:47:02 hours. (*Session 3280*) Shields had just come home from the gym. He wants to take a shower and then see Field. It is going to have to be later in the day when Field’s wife returns home from work.

[610] At 16:15:33 hours, Shields was on the telephone with “Bridgewater” Pat. (*Session 10583*) Shields tells “Bridgewater” Pat, “I did that for ya.” He says he is going “to be tied up for like an hour though” but “Bridgewater” Pat is not concerned by this. Shields asks him: “...You just wanted that, that five minutes, right?” “Bridgewater” Pat thinks so: “I gotta talk to buddy and then I’ll give ya a call back.” “No problem” says Shields, “Just let me know.”

[611] At 17:32:29 hours, Shields texted “Bridgewater” Pat to ask: “When u wanna hook up” (*Session 10604*) In a back and forth, “Bridgewater” Pat asked Shields: “U want me to come there?” (*Session 10607*) At 17:34:01 hours, Shields’ instructions to “Bridgewater” Pat were: “Come to sack and msg” (*Session 10608*) I infer this to mean that Shields wants “Bridgewater” Pat to come to Sackville and send him a text when he gets there.

[612] Shields and “Bridgewater” Pat had a telephone call at 19:07:00 hours (*Session 10627*) “Bridgewater” Pat tells Shields he is “out your way.” They agree to meet at the Superstore.

[613] Sgt. Vail was asked to assume that it was cannabis marijuana that had been ordered by “Bridgewater” Pat – the orders being for 9 grams and then 5 grams on September 13, and 5 grams on September 19 (*Session 10583*) that Shields delivers

on September 21. The question was put to Sgt. Vail: what was his opinion about the frequency of the re-supplying of this purchaser?

[614] Sgt. Vail testified that such “minute amounts” of cannabis marijuana would be “highly unusual” for a street level cannabis trafficker. Cannabis marijuana is not cost-prohibitive so it would not need to be purchased in such small amounts. In Sgt. Vail’s experience, cannabis marijuana users would purchase in larger amounts so as not to have to see their supplier so frequently, reducing the risk of being arrested.

September 22

[615] On September 22, 2011 at 15:22:58 hours, Shields and “Bridgewater” Pat had a telephone call. (*Session 10704*) “Bridgewater” Pat wanted to know if he can take “a run out later on?” Is it “just for the, the regular that we normally do?” Shields asks. “Bridgewater” Pat says “...actually I was gonna ask if you mind if we fuckin’ hooked up for just twenty minutes today, just because they’re killing me here.” That’s fine with Shields who tells him, “...you just let me know when you’re ready man.”

[616] I want to note that Mr. McGuigan for Patrick Scott pointed out to Cst. Tracy King that she had originally interpreted this intercept (*Session 10704*) as “just for the oregano we normally do” and reflected this in her call synopsis. She testified that this is what she believed at the time. However I have listened to the call and I am left with no doubt that “Bridgewater” Pat said, “just for the regular we normally do.”

[617] At 18:48:50 hours on September 22, Shields and “Bridgewater” Pat talked again. (*Session 10736*) Shields was “Just gettin’ home now.” He wanted to know if “Bridgewater” Pat wanted to “stop over.” “Bridgewater” Pat says: “Yeah, you want me to stop at your place?” He’ll give Shields a call when he’s leaving. Shields tells him that needs to be soon because he has to get going.

[618] Prior to Session 10736 and Kyle Shields asking “Bridgewater” Pat if he wanted to come out to Sapphire Crescent, Shields had been talking to John Field. (*Session 3339, 15:38:08 hours*) Shields wanted Field to pay him a visit which Field said he would be ready to do in about twenty minutes. I infer from this that

by the time Shields saw “Bridgewater” Pat, he had been re-supplied by Field and was in a position to fill “Bridgewater” Pat’s “twenty minutes” order.

September 23

[619] On September 23, at 17:23:03 hours, Shields had a telephone conversation with “Bridgewater” Pat (*Session 10808*) who wants to know if Shields will be around. “Bridgewater” Pat is trying to “line up a ride” as he has no vehicle. Shields asks, “. . .how many minutes were you thinkin’?” “Bridgewater” Pat says: “Same as last night?” This has to be twenty “minutes”, the same as “Bridgewater” Pat ordered the day before.

[620] By the time he and Shields have a telephone conversation at 19:28:24 hours, “Bridgewater” Pat is still waiting for transport. (*Session 10828*) Shields says to meet him at Jack Astor’s in Bayers Lake. “I’ll just come out”, he says. He tells “Bridgewater” Pat: “Just shoot me a message when you’re ready.”

[621] At 20:15:17 hours, “Bridgewater” Pat texts Shields: “Here ” (*Session 10836*)

[622] Police surveillance had Kyle Shields in their sights on September 23. At 18:34 hours, Cst. Skidmore observed Shields’ black BMW turn unto the parking area for 1980 St. Margaret’s Bay Road. As there was no place that afforded a staging area for covert surveillance, members of the surveillance team, including Cst. Skidmore, had to drive up and down St. Margaret’s Bay Road, which is what Cst. Skidmore was doing when he saw the BMW.

[623] Cst. Skidmore did not see Kyle Shields and John Field outside the black BMW at 1980 St. Margaret’s Bat Road. Cst. Skidmore next saw the car at 19:32 hours. He observed Shields drop Field off at the TVR bar in Timberlea. Shields was then seen heading on toward Bayers Lake.

[624] Cst. Skidmore testified that Jack Astor’s is a 5 to 7 minute drive from the TVR bar.

[625] At 20:19 hours on September 23, Cst. Skidmore was set up in the Chapter’s store parking lot right next to Jack Astor’s restaurant in Bayers Lake. He shot video footage that captured what the police believed to be a “meet” between

Shields and Patrick Scott. Cst. Skidmore was positioned about 150 – 200 feet away from what he was observing.

[626] The video shows Kyle Shields at 20:19 hours walking out of Jack Astor's. While I do not know the correspondence between the times recorded for the intercepts and the time recorded on the video footage, the sighting of Shields walking out of Jack Astor's is four minutes after "Bridgewater" Pat texted him to say he had arrived.

[627] Shields is very identifiable in the video. He has nothing in his hands although he has his left hand in the pocket of his shorts. He goes toward his car, parked next to a white SUV. A heavy set white male meets him at the rear of the car. Shields and the heavy set male disappear from the sight of Cst. Skidmore's video camera. When Cst. Skidmore was able to see the heavy set man again, he had a white bag in his hand and was walking in Cst. Skidmore's direction. He got into a Sunfire and left. The Sunfire was not followed or stopped.

[628] The video footage captured by Cst. Skidmore of the meeting between Shields and the heavy set man (*Exhibit 111, Task 245, DSC 0006*) shows them meeting at Shields' black BMW. They are in the car for 38 seconds. When they get out they are briefly at the trunk of the car together. Shields walks back to Jack Astor's. When the heavy set man walks away and toward Cst. Skidmore's covert filming, the white bag in the heavy set man's hand can be seen clearly. It is consistent with a bag of powder cocaine however there is no evidence of what it contained.

[629] Cst. Skidmore cannot say how the man acquired the white bag. However another police officer conducting surveillance was able to observe that the man had nothing in his hands when he got into the BMW with Shields.

[630] Sometime after September 23, Cst. Skidmore formed the opinion that the heavy set white male from the Jack Astor's "meet" was Patrick Scott. He had seen an earlier surveillance video from the Sackville Sports Stadium of a heavy set white male and recognized the same male outside Jack Astor's on September 23. A "whole multitude of things" led to his belief that Patrick Scott was the heavy set man who met up with Kyle Shields on September 23 – phone subscriber

information and the content of the calls and text messages. Cst. Skidmore testified that it was all of the information from the investigation that led him and the other investigators to conclude it was Patrick Scott in the parking lot of Jack Astor's with Kyle Shields on September 23. Cst. Skidmore and other investigators obtained a photograph of Patrick Scott from the province, either a driver's licence or a provincial ID. Cst. Skidmore testified that he is "absolutely confident" in his identification of Patrick Scott.

[631] Cst. Skidmore agreed on cross-examination that the details of the man's appearance cannot be made out on the video footage. The man is wearing a hat and seems to have a beard but his eyebrows and the shape of his nose and mouth are indistinct.

[632] Cst. Mitchell was also parked in the Jack Astor's parking lot on September 23. He was there at the same time as Cst. Skidmore. From the rear window of the parked van he was using for surveillance, he observed a heavy set white male, 5 foot 7 to 5 foot 9 wearing a ball cap and chin beard get out of a Sunfire and walk toward Jack Astor's.

[633] Cst. Mitchell watched Kyle Shields come out of Jack Astor's. The heavy set man walked to a black BMW, getting into the passenger side. Shields got into the driver's side. Cst. Mitchell could see directly into the front windshield of the BMW.

[634] Mr. Shields and the heavy set man had nothing in their hands when they got into the BMW. They appeared to be doing something with their hands in the vehicle but Cst. Mitchell was unable to see what it was.

[635] As I have noted, Shields and the heavy set man were only briefly in the BMW. Cst. Mitchell observed Shields pop the trunk from inside the car. He and the heavy set man went to the trunk. Its open lid obscured Cst. Mitchell's view. He could not tell what Shields was doing in the trunk.

[636] Cst. Mitchell observed nothing in either Shields' or the heavy set man's hands before they went to the trunk of the BMW. After the trunk closed, Cst. Mitchell noticed that the heavy set man had a white plastic grocery bag in his hands. This is consistent with Cst. Skidmore's observations. The bag had a

quantity of something in the bottom of it. It was the size of a Sobey's bag. The man was holding it closer to the bottom, not by the top.

[637] The man then walked directly behind Cst. Mitchell's vehicle. Had the window been open, Cst. Mitchell could have reached out and touched him. He observed him for 15 – 20 seconds.

[638] Cst. Mitchell believes the man was Patrick Scott although on September 23 he had not confirmed this. The investigators were in the process of making an identification of the man. Cst. Mitchell believes another officer supplied the name Patrick Scott.

[639] It appears from Cst. Mitchell's testimony that the Albro Lake Road videos he viewed and the subscriber information from the monitor room are what led him to believe the heavy set man in the Jack Astor's parking lot with Kyle Shields on September 23 was Patrick Scott. He does not recall when he viewed the two videos.

[640] Video footage was shot by Cst. Gould on September 13 of a heavier set man at 106 Albro Lake Road following a nearby "meet" with Kyle Shields. Patrick Scott was arrested at 106 Albro Lake Road on December 21, 2011. Cst. Mitchell was involved with his arrest and took a cautioned statement from him. He testified that Patrick Scott was the person he had seen with Kyle Shields in the Jack Astor's parking lot on September 23.

[641] I am satisfied based on the intercepted communications and the surveillance by police that Kyle Shields was at Jack Astor's on the evening of September 23. He made arrangements to meet and did meet "Bridgewater" Pat there. The purpose of the meeting was to make a delivery to "Bridgewater" Pat of twenty "minutes", the order "Bridgewater" Pat had placed that afternoon. The intercept evidence indicates that prior to going to Jack Astor's, Shields made arrangements to meet up with John Field. (*Session 10811, 17:32:45 hours*) There was ample time between when Shields was scheduled to meet with Field and when he met "Bridgewater" Pat for him to have been re-supplied and ready to fill "Bridgewater" Pat's twenty "minute" order.

September 26

[642] Three days later, on September 26, between 13:54:51 hours and 20:37:15 hours Kyle Shields and “Bridgewater” Pat had two calls and five texts.

[643] At 13:54: 51 hours, Shields and “Bridgewater” Pat had a brief conversation on the telephone. (*Session 11033*) “Bridgewater” Pat has decided not to go to work that day. He wonders if “we can hook up for that five minutes...” Shields is waiting for “buddy” to call him back. Once that happens it will be “no problem” he tells “Bridgewater” Pat. He says to “Bridgewater” Pat: “...I’ll give ya a call as soon as I can make that go down.”

[644] From what he says and the context of the call, “Bridgewater” Pat is interested in more. He tells Shields: “...I might just hang around for twenty minutes too if you don’t mind.” He is obviously not talking about “hanging around” with Shields. Once Shields clarifies that the additional twenty “minutes” is for today, he asks: “Okay, well just, do you want me to do that for sure or you don’t know?” “Bridgewater” Pat is sure. He says: “I can do it.” Shields confirms the order: “All right, so get you ah, so you basically the twenty-five minutes?” “Yeah”, is “Bridgewater” Pat’s response.

[645] The reference by Shields to “Bridgewater” Pat’s total order being twenty-five “minutes - the five “minutes” and the twenty “minutes” - leads me to infer that it is all the same controlled substance being discussed, not different substances in two distinct quantities.

[646] Once again, filling “Bridgewater” Pat’s order is contingent on Shields getting re-supplied. At 16:27:50 hours, Shields texts “Bridgewater” Pat to tell him: Seeing buddy at 6” (*Session 11054*) I infer that “buddy” is John Field.

[647] By 19:37:15 hours, “Bridgewater” Pat was wondering what was happening. He texts Shields: “Wats up bud, my rides takin off soon, how yam akin out” (*Session 11082*) He gets a quick response from Shields who texts him back at 19:38:24 hours: “Am at jack astors get out here” (*Session 11083*) “Bridgewater” Pat confirms he’ll be there, texting: “Cool bud c u soon.” (*Session 11084*)

[648] At 19:39:00 hours, “Bridgewater” Pat called Shields to tell him, “I’m here.” (*Session 11093*) Shields wants him to come in “for a beer, bro, I just literally ran

out three times.” Now he’s got an extra big beer and wants “Bridgewater” Pat to just come inside.

[649] I infer from this call that “Bridgewater” Pat arrived at Jack Astor’s and was expecting Shields would come outside where they would transact their business. He was obviously not driving out to Jack Astor’s to have a beer with Shields. That was not reflected in their earlier communications and “Bridgewater” Pat did not arrive expecting to go inside. If he had, he could have just gone in and not called Shields to indicate he was there.

[650] Obviously now inside, “Bridgewater” Pat sends Shields a text at 20:37:15 hours. (*Session 11095*) It says: “Wanna meet me in the bathroom bro”. I find there is only one inference to be drawn from this text: “Bridgewater” Pat, having gone to meet Shields to get his order filled, wants to effect the delivery by way of a clandestine meeting.

October 1

[651] On October 1 at 12:51:03 hours, Shields heard from Ryan MacInnis that he wanted to “come and stop up got a minute”. (*Session 11578*) MacInnis thinks “Bridgewater wants to stop by for a minute too.” However Shields is not at home. He’s in Clayton Park. A woman’s voice can be heard in the background and he consults with her before advising MacInnis to come and pick him up. Shields can be heard telling the woman: “...I gotta go to my spot and get a couple of things for a couple of these guys.” MacInnis is “just heading to Prospect Road now” and will call Shields when he gets close.

[652] Just minutes later, at 12:53:36 hours, Shields called 902 789 [...] subscribed to Patrick Scott, 27 Convoy Avenue. He got a voice mail message: “Hey it’s Pat. Leave a message.” (*Session 11579*)

[653] “Bridgewater” Pat calls Shields back a minute later and asks if he is home. (*Session 11581*) Shields is waiting in Clayton Park for Ryan MacInnis. He tells “Bridgewater” Pat that “...Murmel’s comin’ to get me and I be home soon.” He expects “Murmel” in twenty minutes and says he’ll be home “in a hour”. “Bridgewater” Pat is expecting MacInnis too, telling Shields: “...he’s gotta stop by here too.”

[654] Some hours later, at 18:05:01 hours, Shields and “Bridgewater” Pat talked again. (*Session 11655*) The call was about the conversation Shields had just had with John Field. Shields reports to “Bridgewater” Pat the status of his order. Shields tells him: “I just talked to my buddy. He’s stoppin’ out here at seven ‘cause I gotta give him somethin’ anyway...And I just, I told him to, he said he didn’t know if he could do it or not so I’ll just know when he gets here and I’ll message ya.” That satisfies “Bridgewater” Pat. Shields says, “If not I’ll get it for ya first thing in the morning.” The call ends with “Bridgewater” Pat’s familiar sign-off: “Later.”

October 3

[655] On October 3, Shields and “Bridgewater” Pat exchange texts between 23:29:26 and 23:44:38 hours. “Bridgewater” Pat wants to know if they can “link in the am?” (*Session 11826*) Shields responds: “Ya for the reg?” (*Session 11827*) This is followed seconds later by an afterthought by Shields: “Or for the 5 mins?” (*Session 11828*) And then he asks: “Or both” (*Session 11829*)

[656] “Bridgewater” Pat wants “Both plz” which I interpret to mean, “Both, please.” (*Session 11830*) Shields still needs to clarify the order: “How many minz of the regular?” (*Session 11831*) “Bridgewater” Pat tells him: “20 bud”. (*Session 11833*) In this order, the regular is twenty “minutes”, an amount “Bridgewater” Pat has ordered before. The five “minutes” is referred to separately and not lumped in as was the case in Session 11033 on September 26. This suggests it is something different from the “regular” twenty “minutes”.

October 4

[657] The next day, October 4, Shields texted “Bridgewater” Pat at 10:57:33 hours. (*Session 11838*) I find that in accordance with the late night texts from October 3, Shields is filling “Bridgewater” Pat’s order, “Handling it rate now” which I interpret as: “Handling it right now”. “Bridgewater” Pat is pleased: “Thank bro” (*Session 11839*)

[658] At 11:49:31 hours, Shields is able to tell “Bridgewater” Pat “I’m ready, buddy.” (*Session 11840*) “Bridgewater” Pat however is not close at hand. He will probably be “about an hour” as he is “on my way from down home.” Shields

would have delivered, if “Bridgewater” Pat had been at home: “...I would’ve just come up there...” As “Bridgewater” Pat is not home, Shields tells him “give me a call.”

[659] I infer from this call that Shields has been re-supplied by John Field and can now deliver the order placed by “Bridgewater” Pat the night before. He would have taken it to “Bridgewater” Pat’s Albro Lake address but “Bridgewater” Pat isn’t there, he’s coming into town from an hour away.

[660] At 12:00:34 hours on October 4, “Bridgewater” Pat texted Shields to ask: “U too busy to meet at the same place as last time?” (*Session 11844*) Shields ends up proposing they meet “at the gym.” (*Session 11859*)

[661] “Bridgewater” Pat makes a further request at 12:40:14 hours (*Session 11861*) He asks Shields if “it’s cool we hang out for thirty minutes?” It is.

[662] There is no discussion in any of the Shields/”Bridgewater” Pat intercepted communications to support an inference that “hanging out” for “thirty minutes” meant that “Bridgewater” Pat and Shields were going to spend 30 minutes socializing with each other. Indeed, that would be a very odd proposition, to hang out for such a precise, and short, amount of time. The only reasonable inference is that “Bridgewater” Pat was looking for thirty “minutes” of the commodity Shields has been supplying to him.

[663] The Crown seeks to prove beyond a reasonable doubt that the commodity regularly supplied by Shields to “Bridgewater” Pat was cocaine.

Drawing the Inference that “Bridgewater” Pat was Trafficking in Cocaine

[664] There are two issues I will be addressing now: (1) whether there is proof beyond a reasonable doubt that the product being supplied by Kyle Shields to “Bridgewater” Pat was cocaine; and (2) whether there is proof beyond a reasonable doubt that “Bridgewater” Pat was trafficking the product.

[665] Mr. McGuigan has submitted that the inferences drawn by Sgt. Vail in a number of instances emerge from trying to fit all the pieces of evidence together into a coherent picture of cocaine trafficking. Like Mr. Sarson, Mr. McGuigan says

the evidence allows for reasonable doubt and is too incoherent and inconsistent to support the inferences advanced by the Crown.

[666] Setting aside for a moment the identity issue in relation to Patrick Scott, Mr. McGuigan's other principle argument is that the "one minute equals one gram" inference urged by the Crown is not the only rational inference to be drawn from the intercepts about the commodity under discussion. Mr. McGuigan submits that a "minute" could as readily be understood to represent not a single unit of measurement but a ten-fold measurement. This inference would have Shields and "Bridgewater" Pat meaning 90 when they talked about 9, 50 when they talked about 5 etc.

[667] Mr. McGuigan submits the evidence indicates multi-commodity transactions in which case, Kyle Shields could have been supplying clients who dealt only in street-level marijuana transactions. Mr. McGuigan points out that in all the communications with "Bridgewater" Pat, there is no mention of price and argues that the absence of any price-talk means it is not possible to draw an inference that the product being discussed was cocaine.

[668] I have already referred to some of the intercepts that Mr. Sarson submitted could have been about marijuana and I won't discuss those again. Mr. McGuigan referred to Session 2014 on September 5 in which Kyle Shields talked to Ryan MacInnis about giving him (a reference to "Bridgewater" Pat) "like twenty-nine point seven or somethin'." Mr. McGuigan suggests I can infer this to have been a reference to an amount just shy of 300 grams of marijuana. It is his submission that Sgt. Vail's opinion about 29.7 indicating the precision measuring that applies to cocaine is not the only rational inference.

[669] In Mr. McGuigan's submission, all the evidence the Crown relies on for an inference that cocaine was being trafficked by Kyle Shields and "Bridgewater" Pat – the coded term "minutes", the seizures from the stash location, and the regular re-supplying, the debts – can all just as plausibly point to a trade in marijuana. Using a "ten times" calculation for the "minutes" references creates bigger and therefore profitable amounts of product and makes it possible to view the discussions as trade-talk about marijuana, which, as Sgt. Vail explained, is not profitable in small quantities.

[670] As I have explained, I find the debt amounts being discussed in the intercepted communications were too big to be in relation to cannabis marijuana. I also find the “ten times” formula would have produced amounts of cannabis that would have been too hard to conceal. The police conducting surveillance either observed nothing – which I infer indicates concealment at meetings that had no social purpose but accomplished delivery of product - or only small items, consistent with grams of cocaine, and not anything that was bulky and obvious.

[671] The “ten times” formula produces amounts that are anomalous to marijuana. I find that the only rational inference to be drawn about the commodity said to be “twenty-nine point seven” in Session 2014 on September 5 is that this is a precise weight and not a reference to 300 grams of cannabis marijuana.

[672] The suggestion that each “minute” referred to in the intercepts was understood to be the basis for a “ten times” calculation is not supported by the evidence. The “ten times” formula would have been an unwieldy code and the intercepted communications reveal a deft and sure-footed use of the simple term “minutes” by everyone, including Kyle Shields and “Bridgewater” Pat. I have found that “minutes” referred to in the intercepted communications of Kyle Shields and “Bridgewater” Pat, and otherwise, were coded references to grams.

[673] I have found that Kyle Shields was trafficking cocaine. His trafficking extended to “Bridgewater” Pat who, in the period of August 9 to October 4, 2011, placed regular orders with Kyle Shields for grams of cocaine. This is the only rational inference to be drawn from the intercept evidence and Sgt. Vail’s expert opinion evidence, evidence that I have already discussed.

[674] The only reasonable inference to be drawn from the evidence is that “Bridgewater” Pat was trafficking the product he was getting from Shields. He was getting re-supplied by Shields on a regular basis: September 13, 14, 21, 26, October 1 and October 4 are examples of this. To want ‘the same as last night’ on September 23 having received twenty “minutes” on September 22 can only mean that “Bridgewater” Pat sold the September 22 “minutes” and needed to be re-supplied.

[675] “Bridgewater” Pat refers to his purchasers in Session 10704 on September 22, saying “they are killing me here” which is why he only wants to be re-supplied with twenty “minutes.” I infer that sales were comparatively sluggish by September 22: “Bridgewater” Pat would not have seen himself as being “killed” if his customers were purchasing more.

[676] Trafficking is the only reasonable inference to be drawn about what was happening to the product “Bridgewater” Pat was obtaining from Shields. (*R. v. Griffin*, [2009] S.C.J. No. 28, paragraph 33) Lost product got discussed on the intercepts (*Session 5200, August 4 when Shields called John Field about the missing five “minutes”.*) Seized items were the subject of discussion too. (*Session 7248, August 20 when Suzanne Davidson told Kyle Shields that police had found some “shit” when investigating after her car accident.*) And Ryan MacInnis’ drug bust got plenty of attention. Nothing of this nature surrounded any of the “Bridgewater” Pat/Kyle Shields’ re-supply discussions. As I have discussed, when Shields forgot to fill “Bridgewater” Pat’s order (*September 20, Session 10525*) or either of them had to postpone a meeting (*September 12, Session 9447 and September 19, Session 10446*), there were calls and texts. Otherwise I find the Shields/”Bridgewater” Pat business dealings were transacted smoothly, enabling “Bridgewater” Pat to sell or otherwise distribute what Kyle Shields supplied to him.

[677] Trafficking by transporting was a feature of the relationship between Kyle Shields and “Bridgewater” Pat. Meetings were arranged between September 13 and October 4 at places that required travel by Shields and “Bridgewater” Pat – the Albro Lake Ultramar, Boston Pizza, Sackville Superstore, Jack Astor’s and the Sackville Sports Stadium.

[678] It will be obvious from the reasons I have just given, that I am satisfied the supplying of “Bridgewater” Pat could not have been for personal use. For example, on September 22, “Bridgewater” Pat was looking to get “just twenty minutes” from Shields. (*Session 10704*) The very next day, September 23, “Bridgewater” Pat wanted the same as “last night”. (*Session 10808*) The amounts and the frequent re-ordering were wholly inconsistent with personal consumption.

Is “Bridgewater” Pat Patrick Scott?

Voice Identification - Patrick Scott

[679] For its proof of Patrick Scott's voice, the Crown has relied on the evidence of Cst. Tracy King, self-identification by first name, and the distinctive features of the voice in issue.

[680] In 2011, Cst. Tracy King was an RCMP member of the Halifax Drug Section. She was assigned to the monitor room once the intercepts were set up. She was in the monitor room full time, five days a week and sometimes six or seven days in the week, eight plus hours per day. She was involved in at least half of the 43,000 intercepted calls.

[681] Cst. King listened to each call or reviewed the text messages. She would sometimes listen to calls five and six times to understand what was being said. If she thought the call was pertinent to the drug investigation she would flag the call and write a brief synopsis of it.

[682] Cst. King testified that she became familiar with the voices on the intercepts, including the voice believed to be Patrick Scott's. She first started to hear this voice about halfway through the intercepts, "probably August." She thinks there were probably forty "Patrick Scott" voice calls and she reviewed all of them.

[683] Cst. King made note of the number used in the "Patrick Scott" calls – 789 [...] subscribed to Patrick Scott, 37 Convoy Avenue, Halifax, N.S. Self-identification, extensive exposure through the intercepts, and contextualized references cemented Cst. King's confidence in her identification of Patrick Scott's voice.

[684] The first call from 789 [...] was on August 9, 2011 (*Session 5861*) in which the voice identifies himself to Kyle Shields as "Pat" – "This is Pat". When Shields says, "Bridgewater Pat?" "Pat" says: "A lot further but yeah, that's the general direction, that's me." He tells Shields he got his number from "Mermel", that is Ryan MacInnis.

[685] Cst. King identified two other calls that assisted her in identifying the voice of Patrick Scott. In Session 11579 on October 1, 2011 a male speaker identifies himself as "Pat." In Session 9505 on September 13, 2011, a male using the mobile

phone subscribed to Patrick Scott (789 [...]) tells Shields how to find Albro Lake Road, where he is located.

[686] Cst. King included Session 9505 call as a call that aided her in identifying Patrick Scott's voice because she was familiar with where Scott lived at the time, 106 Albro Lake Road. On the day of Scott's arrest, December 21, 2011, Cst. Gould observed a male leaving through the rear door of 106 Albro Lake Road. He believed it to be Patrick Scott and it was.

[687] Cst. King accompanied Scott when he taken to the RCMP detachment in Lower Sackville, sitting with him in the back of the van. During the 17 minute drive from Albro Lake Road, they engaged in some small talk says Cst. King to break the silence. Scott was brought into an interview room at the detachment and interviewed by police. His interview (*Exhibit 110*) was introduced into evidence solely for the purpose of voice identification.

[688] In the interview, Scott can be seen to be a heavy set man with a beard and scraggly hair. He is quite laconic, uttering only a few sentences. He says enough for his voice to be compared to the voice the Crown alleges is his on the intercepts.

[689] Cst. King described how Patrick Scott's voice sounded to her: tending to be "very nasally" with "a bit of a twang, like a South Shore twang...quite distinct...a medium tone...not a deep voice...tends to a higher pitch..."

[690] There are additional clues to identity in the calls the Crown alleges include Patrick Scott. At the end of the August 9 call with Kyle Shields (*Session 5861*), "Pat" uses what becomes a signature sign-off for this voice: "Later."

[691] This same voice is heard on August 27 in Session 7820 where he also ends the call with the same idiomatic turn of phrase, "Later."

[692] The August 27 call (*Session 7820*) between Kyle Shields and "Bridgewater" Pat occurs minutes after Shields has told Ryan MacInnis to have "Bridgewater" Pat call him. MacInnis had called because "Bridgewater" was looking for "fifteen".

[693] On September 12, 2011, in Session 9445 the same voice says he is "travelling" and is recognizable as the voice in the other calls alleged by the Crown to be the voice of Patrick Scott.

[694] On September 13 in Session 9485, the voice alleged to be Patrick Scott sounds like the “Patrick Scott” voice in the other calls. He says “Later” at the conclusion of the call. Session 9505, also on September 13, the “Patrick Scott” voice ends the call with “Later.”

[695] In Session 10042 on September 17 the Patrick Scott mentions Mermal and the voice is the same. He ends the call with “Later” as in other calls. The same voice is on Session 10094 and ends the call with “Later.”

[696] In Session 10208 on September 17, the voice alleged to be Patrick Scott sounds the same as in the other calls he is alleged to be a participant in. It is the same accent. He ends the call with “Later”.

[697] In Session 10525 on September 20, it is the same voice that the Crown alleges is Patrick Scott in other calls. He says “cool” in a consistent and recognizable way and ends the call with, “Later.”

[698] On September 21, the Crown alleges that Patrick Scott is a participant in two calls – Session 10583 and 10627. The voice alleged to be Patrick Scott sounds the same in both calls and is the same voice the Crown alleges is Patrick Scott in other calls. In both sessions, the Patrick Scott voice ends the calls with “Later.”

[699] On September 22, in Session 10704, the “Patrick Scott” voice is the same as in the other calls where the Crown alleges he is speaking. He ends the call with his recognizable sign-off: “Later.”

[700] On September 23, there are two calls in which Patrick Scott is alleged to be a participant: Sessions 10808 and 10828. The voice is the same in both calls; it is consistent with the voice on the other calls that is alleged to be Patrick Scott. He ends both calls with: “Later.”

[701] On September 26, there are two calls in which Patrick Scott is alleged to be a participant: Sessions 11033 and 11093. The same voice is heard in both calls and the “Patrick Scott” voice ends Session 11033 with: “Later.”

[702] On October 1, in Session 11579, a call to 789 [...] gets a voice mail message that says: “Hey it’s Pat. Leave a message.” The recorded voice is the “Patrick Scott” voice.

[703] In Session 11581, the same voice that is alleged to be Patrick Scott can be heard sounding exactly like the “Patrick Scott” voice in other intercepts. He ends the call with: “Later.” Kyle Shields tells him that “Mermal is coming to get me.”

[704] In Session 11655 also on October 1, the “Patrick Scott” voice sounds the same. The voice says “cool” in an identical way and ends the call with: “Later.”

[705] On October 4, there are three calls in which Patrick Scott is alleged to be a participant – Sessions 11840, 11861, and 11874. The voice is the same throughout. In Sessions 11840 and 11861, the “Patrick Scott” voice ends the call with his customary: “Later.”

[706] Patrick Scott’s voice is quite distinctive as Cst. King noted: nasally and reedier than Kyle Shields’ voice and with an audible twang. I am satisfied beyond a reasonable doubt that the voice alleged by the Crown in the intercepts to be Patrick Scott was Patrick Scott. I find this based on the evidence tendered by the Crown to prove the identity of Patrick Scott’s voice and from listening myself to the intercepted calls in which he was speaking.

Subscriber Name Evidence

[707] The subscriber name of Patrick Scott for number 902 789 [...] used throughout by “Bridgewater” Pat is another piece of identity evidence that supports a finding that “Bridgewater” Pat is the accused Patrick Scott. I am satisfied beyond a reasonable doubt that throughout the Part VI investigation Patrick Scott was using a mobile phone subscribed to him with the number 902 789 [...]. He used this phone to place and receive calls and also to send and receive texts.

Police Surveillance Following Up Intercepts Arranging a Meet

[708] I find that surveillance conducted by police following calls where individuals believed to be Shields and Scott were speaking is positive evidence of who had been speaking on those calls. Police officers identified Shields and Scott meeting each other on several occasions following intercepts that indicated to police an in-person meeting was going to occur.

[709] As I noted earlier in these reasons, police investigators had information from the intercepts on September 13 that Shields was going to meet up with

“Bridgewater” Pat on Albro Lake Road in Dartmouth. “Bridgewater” Pat gives Shields directions to the PetroCan on Albro Lake Road. A man matching Patrick Scott’s appearance meets with Kyle Shields at the PetroCan soon after the “Bridgewater” Pat/Kyle Shields calls. One police officer sees this man walking up Albro Lake Road and a second officer sees a man with the same appearance enter 106 Albro Lake Road. Patrick Scott was known to live at 106 Albro Lake Road and on December 21 was arrested at the apartment building

[710] Similarly, on September 23 police officers set up surveillance outside Jack Astor’s after monitoring a call that Shields wanted “Bridgewater” Pat to meet him there.

[711] On October 4 there was a call from “Bridgewater” Pat to Shields at 13:44:36 hours (*Session 11874*). Shields asks: “What’s up, buddy?” and “Bridgewater” Pat answers: “Nothin’. I’m just here.” Presumably “Bridgewater” Pat has done as directed in an earlier text and gone to meet Shields at the gym.

[712] On October 4, 2011, Cst. Gould was part of a surveillance team targeting Kyle Shields and John Field. At 11:52 hours, he observed a black BMW turning right at Exit 3 on Highway 3. He saw the black BMW, license number EUK 333 – Kyle Shields’ BMW – at the intersection of Exit 4C and Glendale Avenue. At 12:09 he saw Kyle Shields was driving, and was at the intersection of Glendale Avenue and Cobequid Road.

[713] At 13:17 hours, Cst. Gould saw Shields’ BMW parked at the Sackville Sports Stadium. From about 100 feet away, he saw Shields walking into the gym with a UFC-type brown muscle shirt.

[714] Cst. Gould and Cst. Burton conducted surveillance in the Sackville Sports Stadium parking lot on October 4. They observed a man they believed to be Patrick Scott there. Cst. Gould saw him walk into the gym with Kyle Shields. Cst. Gould testified: “You could tell they knew each other.”

The Weight to be Given to the Identification Evidence

[715] The police officers who identified Patrick Scott in their surveillance at various locations during the investigation were trained observers with experience

in conducting surveillance and making and recording their observations. Their dedicated purpose was to closely watch targets and persons who met with the targets. Over time they acquired a visual familiarity with individuals such as “Bridgewater” Pat. This enabled Cst. Manning to identify Scott from a photograph he saw later. Cst. Skidmore saw video footage from the Sackville Sports Stadium and recognized the male in it as the heavy set man he had seen outside Jack Astor’s on September 23. Cst. Burton recognized Scott on October 4 at the Sackville Sports Stadium as the man he had seen on September 13 at the Albro Lake Petro Can.

[716] There is a consistency between the video surveillance footage from September 13 at 106 Albro Lake Road and September 23 at Jack Astor’s, the “naked eye” surveillance observations of the police officers on October 4 at the Sackville Sports Stadium and Patrick Scott’s appearance in his police interview. The captured images and the police officers’ descriptions are uniform in their depiction of body size, shape, hair, and facial hair.

Physical Appearance Evidence

[717] The physical similarities that are apparent from observing Patrick Scott at his police interview compared with the police descriptions of whom they believed they were surveilling and the video surveillance footage, while not determinative of the identity issue, are consistent with “Bridgewater” Pat being Patrick Scott.

[718] Taking all the identity evidence into account, I am satisfied beyond a reasonable doubt that “Bridgewater” Pat is Patrick Scott.

PART VI - Were Kyle Shields and Patrick Scott Involved in a Conspiracy to Traffic Cocaine?

The Law of Conspiracy

[719] It is well settled law that a conspiracy charge must be considered in relation to the three-part *Carter* test. (*R. v. Carter*, [1982] S.C.J. No. 47)

- 1) Has the Crown proven beyond a reasonable doubt the existence of the conspiracy?

- 2) Based on evidence only admissible against Kyle Shields and Patrick Scott, has the Crown proven that they were probably members of the conspiracy?
- 3) Finally, if I find there was a conspiracy to which Shields and Scott were probable members I must still determine, considering all of the evidence: are Shields and Scott guilty beyond a reasonable doubt of being members of the conspiracy?

[720] It is important to understand what constitutes a conspiracy. The Supreme Court of Canada in *R. v. Dery*, [2006] S.C.J. No. 53 reiterated that the purpose behind criminalizing conspiracies is “to prevent an unlawful object from being attained and therefore prevent serious harm from occurring.” Fish, J. observed that: “By criminalizing conspiracy, the legislature has intervened earlier along the continuum because of the increased danger represented by a cohort of wrongdoers acting in concert.” (*paragraph 44*) Paciocco, J. of the Ontario Court of Justice makes this point as well: “The law of conspiracy achieves this policy [of preventing serious harm from occurring] by allowing a pre-emptive strike where there is a true agreement to achieve a mutual criminal objective.” (*R. v. Meyer*, [2012] O.J. No. 6235, *paragraph 21*)

[721] Proof of a conspiracy requires more than showing that “two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a consensus to effect an unlawful purpose.” (*R. v. Papalia*, [1979] 2 S.C.R. 256, *page 12 (QL version)*) As *Papalia* states: “In addition to proof of common design, it was incumbent on the Crown to establish that each accused had the intention to become a party to that common design with knowledge of its implications.” (*Papalia*, *page 15 (QL version)*)

[722] Proof of the existence of a conspiracy does not require proof that everyone named as a conspirator was involved or that the conspirators were involved throughout the entire time alleged in the charge. “...it is sufficient if the evidence adduced demonstrates that the conspiracy proven included some of the accused; establishes that it occurred at some time within the time frame alleged in the indictment; and had as its object the type of crime alleged.” (*R. v. Douglas*, [1991] S.C.J. No. 16, *paragraph 41*) As noted in *Papalia*:

The essence of criminal conspiracy is proof of agreement.... The agreement reached by the co-conspirators may contemplate a number of acts or offences. Any number of persons may be privy to it. Additional persons may join the ongoing scheme while others may drop out. So long as there is a continuing overall, dominant plan there may be changes in methods of operation, personnel, or victims, without bringing the conspiracy to an end. The important inquiry is not as to the acts done in pursuance of the agreement, but whether there was, in fact, a common agreement to which the acts are referable and to which all of the alleged offenders were privy...(page 12, QL version)

[723] In this case, the Crown must prove beyond a reasonable doubt that Shields and Scott had an agreement to traffic in cocaine. “How that agreement is to be carried out, that is to say, the steps taken in furtherance of the agreement (the overt acts) are simply elements going to the proof of the essential ingredient of the offence, namely the agreement.” (*Douglas, paragraph 28*)

Has the Crown Proven Beyond a Reasonable Doubt the Existence of a Conspiracy?

[724] As I have indicated already, I have no doubt about the illicit nature of the enterprise nor the subject matter of the intercepted communications. What was being so carefully skirted around by the deliberately vague references in the calls and texts was the commercial enterprise of trafficking in cocaine. The intercepts establish conclusively that there was an active conspiracy to engage in this enterprise. I find the Crown has proven beyond a reasonable doubt that a conspiracy existed in the period of June 30 to October 11, 2011.

[725] The conspiracy is made out by the intercepted communications that involved Kyle Shields and his supplier, John Field and Shields’ conversations and meetings with a number of other individuals. Shields was re-distributing the product Field supplied. It went to MB , Suzanne Davidson, JW, JB, RC, KD, Ryan MacInnis, and Patrick Scott, as well as others. There is evidence that the product was then

distributed further. It was Shields' regular practice to be in touch with John Field about obtaining product and then meeting with him to get re-supplied.

[726] On July 7, Kyle Shields was told by MB that he needed some product for his cousin. On July 11 JW wanted some for "my boy." Suzanne Davidson wanted product for other people to be distributed when she went to Truro. There were also people from Cape Breton who were waiting to be supplied by Davidson once she had been re-supplied by Kyle Shields. Patrick Scott was transacting somewhere outside of Halifax, earning him the nickname "Bridgewater", and was re-supplied by Kyle Shields.

[727] Everyone speaking to Shields in the intercepted communications, including Patrick Scott, and Shields himself, talked about "minutes", a term unique to the people involved, and understood without explanation. This common language served the common, intended purpose of managing the business of cocaine trafficking. I have rejected the suggestion that "minutes" may have meant different things in different conversations with different people. There is nothing to indicate this.

Has the Crown Proved that Kyle Shields was Probably a Member of the Conspiracy?

[728] The proof that Kyle Shields was probably a member of the conspiracy must be based on evidence that is admissible against Shields alone. His admissions in the intercepted communications, which I have extensively reviewed, are admissible to establish that he was probably a member of a conspiracy to traffic cocaine. I have indicated that I am satisfied Shields was being supplied with cocaine by John Field and had a network of distributors for it, including Ryan MacInnis and Suzanne Davidson.

Has the Crown Proved that Patrick Scott was Probably a Member of the Conspiracy?

[729] Based on evidence admissible against Scott alone, that is the intercepted communications in which he was a participant, which I reviewed in detail earlier, I find that he was a probable member of the conspiracy to traffic cocaine. I am

satisfied the Crown has proven that Scott was involved with Shields and MacInnis, other members of the conspiracy, in the trafficking of cocaine.

Has the Crown Proven Beyond a Reasonable Doubt that Shields and Scott Are Each Guilty of Being Members of the Conspiracy?

[730] Having determined that there was a conspiracy and that Shields and Scott were probable members of it, for the final stage of the analysis – determining if the Crown has proven beyond a reasonable doubt that Shields and Scott are each guilty of being members of the conspiracy – I am permitted to use the intercepted communications of the alleged co-conspirators, the admissibility of which falls under the co-conspirators’ exception to hearsay rule. Such evidence may also be admissible if it satisfies the requirements of necessity and reliability under the principled approach to hearsay. Statements admissible on this basis must have been in furtherance of the conspiracy, “that is while the conspiracy was ongoing and toward the accomplishment of the common object.” (*R. v. Smith*, [2007] N.S.J. No. 56 (C.A.), paragraph 194)

[731] As set out by the Supreme Court of Canada in *R. v. Mapara*, [2005] S.C.J. No. 23:

The co-conspirators’ exception to the hearsay rule may be stated as follows: “Statements made by a person engaged in an unlawful conspiracy are receivable as admissions against those acting in concert if the declarations were made while the conspiracy was ongoing and were made towards the accomplishment of the common object.” Following *Carter*, co-conspirators’ statements will be admissible against the accused only if the trier of fact is satisfied beyond a reasonable doubt that a conspiracy existed and if independent evidence, directly admissible against the accused, established on a balance of probabilities that the accused was a member of the conspiracy. (paragraph 8)

[732] The basis for admitting the evidence of what co-conspirators say to each other in lawfully intercepted telephone conversations has been articulated in *Oliynyk*:

Telephone conversations between participants in a conspiracy furnish cogent and reliable evidence of the very essence of the conspiracy. It is undeniably the best evidence that exists concerning what is occurring between the conspirators. The ability to record conversations and communications between parties engaged in a conspiracy greatly altered the evidentiary landscape in conspiracy prosecutions...in the wiretap era, the whole framework and details of the criminal enterprise can now be exposed to view. It is difficult to see how one could obtain evidence of similar quality by calling unindicted co-conspirators or parties not charged to testify to what they said at an earlier time. As observed by the Chief Justice in *Mapara*, the conversations between the conspirators possess a *res gestae* quality...(paragraph 42)

[733] I find there is ample admissible evidence to establish beyond a reasonable doubt that Kyle Shields and Patrick Scott are guilty of conspiring with each other and others, as I have indicated, to traffic in cocaine. The evidence clearly establishes that Ryan MacInnis deputized Patrick Scott to deal with Shields while “heatbag” MacInnis was lying low after his drug bust. The intercepts disclose that Scott, MacInnis, and Shields were engaged in a common enterprise and managed product and debt to benefit their shared goal of trafficking cocaine. The following is some of the evidence that establishes beyond a reasonable doubt that Kyle Shields and Patrick Scott are guilty of conspiracy to traffic in cocaine.

August 5

[734] On August 5, Shields had orders from Suzanne Davidson and Ryan MacInnis to fill. He was unable to do so until John Field’s wife returned from bingo and could take over the childcare. Davidson was worried her purchasers were going to lose patience. Shields reassured her in Session 5367 at 21:19:29

hours that her purchasers were not going to leave without the product: "...they're not goin' to Cape Breton and getting' fuckin' absolute fuckin' shit...for the sake of a fuckin' half hour or hour..." This placated Davidson and she commented that these purchasers of hers were "gonna make lots of money too, right...They're probably gonna make more than us."

[735] In Session 5307 on August 5 where Davidson asked for "another ten minutes" she went on to tell Shields that "he's gonna call me thirty minutes before he gets to my house." I infer that this was Davidson's "buddy" who was a purchaser for the cocaine Shields was supplying to Davidson.

[736] Davidson subsequently wanted to know if her friend was to get "three" would it be any cheaper, that is, was there a bulk discount? (*Session 5343, 20:46:02 hours*) Shields told her he did not see how he could reduce the price further. He told Davidson he did not even know if he was doing as well as she was: "...I don't even know if I'm doin' as good as what you're doin'..." Davidson acknowledged "it's still a pretty good price..." Shields mused about possibly discounting the price if Davidson's purchaser "did two more maybe..." He told Davidson: "...I'll just work out how much it would come to and then I'll just knock off a few bucks, you know what I mean...I'll work somethin' out." He told Davidson he would have another one ready "just in case".

August 20

[737] On August 20 when Davidson told Shields about her car accident, she acknowledged that she was going to be "a little bit short" but would settle up with Shields once things calmed down. (*Session 7248*) These arrangements, which were acceptable to Shields, reflect the fact that Shields and Davidson were sorting out terms on which to further their common purpose of trafficking in cocaine and maintaining their business relationship.

[738] The August 5 and August 20 intercepted communications between Shields and Davidson are admissible as evidence against Shields on the third branch of the *Carter* conspiracy test.

August 27

[739] On August 27 (*Session 7819, 13:16:07 hours*) Shields and MacInnis had a discussion about a debt. Shields owed MacInnis “thirty-four”. MacInnis proposed that “Bridgewater’s” “eighteen” come off the “thirty-four” resulting in a new balance for Shields’s debt.

[740] This is an example of evidence that is admissible against Patrick Scott under the co-conspirator’s exception to the hearsay rule as is the following intercepted communications between Kyle Shields and Ryan MacInnis on September 5.

September 5

[741] On September 5 at 14:24:59 hours, (*Session 8639*) Ryan MacInnis told Shields that he had some money for him, “...probably closer to three by the time I’m said and done.” He was trying to get hold of “Pat”, so “he could give me some too.” Shields was going to the gym and to eat so he’ll “probably be three hours” by the time he could come out and collect the money.

[742] At 16:08:19 hours, (*Session 8658*) MacInnis texted Shields to tell him that as he was waiting for Pat to stop in. Then MacInnis would get him to call Shields. MacInnis was going to give Pat something - “the flow” - to give to Shields and would text Shields to tell him the quantity “how much” – when he saw Pat.

[743] Shields and MacInnis had a later telephone conversation on September 5. (*Session 8696, 19:07:51 hours*) MacInnis told Shields that he had given “him”, that is Patrick Scott, “two for now.” MacInnis would have some more when “he”, that is Scott, “comes back again.” Shields wanted to know what he should give “him” when he arrived. MacInnis suggested “...whatever he wants. Thirty or forty or somethin’, fifty.” Shields would “like it to start goin’ down” which I infer to be the debt. I infer that the discussion related to “fronting” and that a debt had built up that Shields wants reduced.

[744] MacInnis told Shields he had thought Scott would have had more money with him but he didn’t. Shields was, as usual, unperturbed by this and said it “sounds good” to him. He said he would text MacInnis to tell him “what I hook him up”, which I infer indicated that he was going to text MacInnis to tell him what he decided to “front” to Scott. After this, Scott was in touch with Shields who told him to come to his house. (*Sessions 8701, 8704, 8705*)

[745] I find the intercepted conversations I have just reviewed were about the couriering of drug money by Patrick Scott from MacInnis to Shields and Scott's role in assisting MacInnis and Shields with their cocaine trafficking business and the conspiracy to distribute cocaine.

September 9

[746] On September 9, Shields talked with MacInnis about how he managed the debt end of things, in relation to his customers and John Field: "...Whatever I give him or whatever you give me or whatever, whoever, like, not even you, one of my guys. Whatever you give me...I'm givin' them like ninety percent on what they give me. So I can take a little bit off...that way, mine's goin' down with buddy...Shields noted that "Some guys just pay on par anyways." (*Session 9070, 17:48:26 hours*) I find the "buddy" Shields referred to in this call was John Field.

[747] This call is evidence of Kyle Shields' membership in the conspiracy to traffic cocaine.

[748] Kyle Shields' membership in the cocaine trafficking conspiracy is established beyond a reasonable doubt by the intercepted communications he had with John Field about re-supplying, debt management, and payments of money, which I previously discussed.

September 12

[749] On September 12 in Session 9444, Ryan MacInnis has a conversation with Kyle Shields and makes an obvious reference to having spoken with "Bridgewater" Pat, that is, Patrick Scott. MacInnis tells Shields that "he's ___ ready to go for the same, I guess. Do the same again." Shields doesn't have much on hand: "I got somethin' here but I don't think that much, buddy." MacInnis tells him: "Yeah, well, I mean, it doesn't matter. He can drop that off for ya and grab what ya got, I guess."

[750] The call is evidence, admissible against Scott, that he will be dropping some money off to Shields and collecting whatever cocaine Shields has on hand. MacInnis has talked to Scott about this and was relaying the arrangements to Shields. The intercepts show that Scott called Shields (*Session 9445*) immediately

after the Shields/MacInnis conversation. Shields told Scott: "...I got somethin' there. Might not be as much as before, but I mean, you can always come back tomorrow or somethin', right?" But he's got something he tells Scott: "Definitely somethin'. _____ probably like ten or fifteen minutes or somethin' there, anyway." As I discussed earlier in these reasons, in subsequent texts, Shields and Scott re-tool their plans and agree to meet the next day, September 13.

September 13

[751] On September 13, Kyle Shields had a discussion with Patrick Scott about "that five other..." that Scott wanted. (*Session 9505*) Shields did not have it and will have to get it for Scott "later on." Shields asked Scott who will carry the debt for the "five other" – Scott or Ryan MacInnis? It doesn't matter to Scott, who has already told MacInnis "about it", or to Shields. He tells Scott: "I can just give that to you." "That works out good", Scott replies. Shields has "nine minutes", that is what I have already found to have been nine grams of cocaine, for Scott and will drop that off to him. Shields tells Scott: "...right now I'm gonna come grab that and drop this off and then we'll work somethin' out for later" that is, the other five grams of cocaine.

[752] The September 12 and 13 intercepts are proof beyond a reasonable doubt of Patrick Scott's membership in the conspiracy to traffic cocaine.

September 17

[753] On September 17, Patrick Scott is helping Shields and MacInnis keep the cocaine trafficking enterprise afloat notwithstanding MacInnis' drug bust on August 30. At 18:58:14 hours, Shields got a call from Ryan MacInnis. (*Session 10175*) MacInnis knows that Shields has been talking to Scott earlier: "You were talking to my buddy then, were ya?" Shields tells him: "I'm just gonna see him for the thirty minutes or whatever and then do the same thing, right." That suits MacInnis who says: "...it's workin' good."

[754] The only reasonable inference to be drawn from this call in the context of earlier calls and texts on September 17 between Shields and Scott is that Patrick Scott was instrumental in helping to keep business moving while MacInnis, still a "heat bag", was maintaining a low profile. MacInnis' conversation with Shields is

an example of him keeping his finger on the pulse of the conspiracy. The call is evidence that proves beyond a reasonable doubt Shields' and Scott's membership in the conspiracy to traffic cocaine.

[755] I find that other intercepts between Scott and Shields that I have already reviewed also offer proof beyond a reasonable doubt of their membership in the cocaine trafficking conspiracy, for example, on September 17, September 19, September 20, September 21, September 22 (such as *Session 10704*, where Shields asks Scott if it "just for the...regular that we normally do?"), September 23, September 26 (such as *Session 11033*, where Shields tells Scott he will give him a call "as soon as I can make that go down", that is, as soon as he can re-supply via John Field), October 1, October 3, and October 4.

Conclusion

[756] On the basis of these extensive reasons, I am satisfied beyond a reasonable doubt that Kyle Shields is guilty of trafficking cocaine between June 30 and October 11, 2011 as is Patrick Scott, and that they are each guilty of a conspiracy to traffic cocaine in this timeframe. I enter convictions accordingly.