PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Davidson*, 2014 NSPC 42

Date: 2014-04-24
Docket: 2483230, 2483232, 2483233
Registry: Shubenacadie

Between:

The Queen

v.

Chad Keith Davidson

DECISION ON GAROFOLI APPLICATION

Judge:	The Honourable Judge Timothy Gabriel
Heard:	April 24, 2014, in Shubenacadie, Nova Scotia
Oral Decision:	April 24, 2014
Written Release:	June 24, 2014
Charge:	Section 7 *Controlled Drugs and Substances Act*, Sections 354(1)(a), 86(1) *Criminal Code*
Counsel:	David Barrett, for the Accused (Applicant) Linda Hupman, for the Crown (Respondent)

By the Court:

Introduction

[1] Chad Keith Davidson is charged with unlawful production of cannabis marihuana, contrary to s. 7(1) of the *Controlled Drugs and Substances Act*. The charges stem from a search conducted by the RCMP at 9:00 a.m. on June 20th, 2012, of his residential premises located at 1560 Georgefield Road, Maitland, Nova Scotia. The police officers were acting pursuant to a warrant issued by the learned Justice of the Peace at 7:07 p.m. the previous day. The warrant was issued under s. 487.1(5) of the Criminal Code, and was therefore what is commonly referred to as a "telewarrant". The police located and seized a quantity of marihuana plants, so called clones, located both inside and outside the accused's residence at various stages of growth, and other assorted items which will be further particularized shortly.

[2] Mr. Davidson contends that his s. 8 *Charter* rights were violated by what was, in effect, an unlawful search and seizure. He argues that the search was unlawful for two reasons. First, he alleges there was insufficient evidence in the Information to Obtain (or I.T.O.) for the learned Justice of the Peace to have authorized a

search warrant. Second, he asserts that the police failed to meet the prerequisites for a telewarrant pursuant to s. 487.1(1) of the *Criminal Code*. If I accept one or both of the accused's contentions with respect to these issues, I am asked to exclude the evidence seized by the police under s. 24(2) of the *Charter* on the basis that its admission would bring the administration of justice into disrepute.

[3] Dealing with the sufficiency of the evidence in the I.T.O., paragraphs 10 to 20 therein contain the essential elements that are in play here. I am not going to reiterate them exhaustively. I will refer to the salient points as required by the context of the decision.

[4] The search warrant was executed on June 20th, 2012, at 9:00 a.m., and the police seized the following: four lights located in upstairs bathroom used to grow marihuana; a Honeywell fan found in the upstairs bathroom; one large potted marihuana plant located upstairs; 48 marihuana plant clones found upstairs in the bathroom in the tub where the lights and fan had been set up; a container of Miracle Grow located in the upstairs bathroom; SD memory card from a camera found in the living room; shotgun shells found in a Sobey's bag in the main bedroom; an Ace 1 .22 LR rifle found in the main bedroom closet; a Cooey 60 .22 caliber bolt rifle found in the main bedroom closet; a Winchester lever action rifle

found in the main bedroom closet; two Department of Transportation street signs found in the living room; and nine marihuana plants found in various locations outside on the property.

[5] Certain principles are well settled. *R. v. Collins*, 1989 OJ 488 (Ont. C.A.), and the cases decided pursuant to it, tell us that a presumption of validity exists with respect to a search warrant. Given that presumption, the applicant bears the onus of establishing on a balance of probabilities that his s. 8 *Charter* rights were violated when the police searched his residence, and seized the items in question.

[6] Moreover, I am not to substitute my judgment for that of the Justice of the Peace who issued the warrant. The issue, as expressed in R. v. *Garofoli*, 1990 2 SCR 14 (paragraph 56), is whether:

> …based on the record which was before the authorizing Judge as amplified on the review, the authorizing judge could have granted the authorization.

[7] This has received further elaboration by the Supreme Court of Canada in *R. v. Morelli*, 2010 SCR 8, at paragraph 40, where Justice Fish stated:

> In reviewing the sufficiency of a warrant application, however, "the test is whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued" (*R. v. Araujo*, 2000 SCC 65 (CanLii), 2000 SCC 65. The question is not whether the reviewing court would itself have issued the warrant, but whether there was sufficient credible and reliable evidence to permit a Justice of the Peace to find reasonable and probable

> grounds to believe that an offence had been committed and that evidence of that offence would be found at the specified time and place.

The word used is "could", not "should", in the phrase "could have issued". Much turns upon that distinction.

[8] *R. v. Debot* (1989), 52 CCC (3d) 193 (SCC), although it dealt with the sufficiency of grounds to justify a warrantless search, is equally applicable to address the sufficiency of the grounds in the Information to Obtain a Search Warrant. As Justice Wilson noted at p. 215:

> In my view, there are at least three concerns to be addressed in weighing evidence relied on by the police to justify a warrantless search. First, was the information predicting the commission of criminal offence compelling? Secondly, where that information was based on a "tip" originating from a source outside the police, was that source credible? Finally, was the information corroborated by police investigation prior to making the decision to conduct the search? I do not suggest that each of these factors forms a separate test. Rather, I concur with Martin J.A.'s view that the "totality of the circumstances" must meet the standard of reasonableness. Weaknesses in one area may, to some extent, be compensated by strengths in the other two.

[9] It is therefore apparent that there is no single factor that is of disproportionate importance. Put differently, and again having recourse to the Supreme Court of Canada, this time in R. v. *Araujo*, 2002 SCR 992, at paragraph 51:

> In looking for reliable information upon which the authorizing judge could have granted the authorization the question is simply whether there was at least some evidence that might reasonably be believed on the basis of which the authorization could have issued.

[10] In Paragraph 54 of *Araujo(supra)*, the Court continued:

> An approach based on looking for sufficient reliable information in the totality of the circumstances appropriately balances the need for judicial finality and the need to protect previous authorization systems. Again the test is whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued.

[11] While I am not entitled to simply substitute my opinion for that of the authorizing judge, I am entitled to draw reasonable inferences from the facts stated in evidence, whether those facts arise from the I.T.O. or upon amplification. Since no amplification was offered, inferences to be drawn, if any, would have to flow from evidence contained in the I.T.O. In addition, although I have the power to sever parts of the I.T.O. containing misleading or false allegations, nothing that could be said to fall within this category has been raised by the Defence (other than in submissions related to the telewarrant, which will be addressed separately).

[12] As is frequently the case, many of the facts alleged in the I.T.O. have their origin in an anonymous tipster, or a police "Source". As Justice Sopinka notes at page 191 of *Garofoli (supra)*:

> (i) Hearsay statements of an informant can provide reasonable and probable grounds to justify a search. However, evidence of a tip from an informer, by itself is insufficient to establish reasonable and probable grounds.

> (ii) The reliability of the tip is to be assessed by recourse to the "totality of the circumstances". There is no formulaic test as to what this entails. Rather the Court must look to a variety of factors including:
>
> (a) The degree of detail of the tip;
>
> (b) The informer's source of knowledge
>
> (c) Indicia of the informer's reliability such as past performance or confirmation from other investigative sources;
>
> (d) The results of the search cannot *ex post facto* provide evidence of reliability of the information.

[13] In the present case, Source A was referenced in paragraph 10(i) of the I.T.O. as having been known to Constable McQuaid for a minimum of five years and as someone whom McQuaid believes to be reliable. This source is also said to associate freely with persons involved in criminal activity, to be someone with whom handlers have spoken (on the phone) a minimum of six times, and with whom they have had three personal contacts. We are further told that Source A has provided information on six different occasions, police have acted on the information on two prior occasions, and on one such occasion a search warrant was executed with positive results.

[14] In paragraph 11, certain facts pertinent to the accused are related by Source A. This information is summarized on page 5 of the Crown's brief as follows:

> That Chad Davidson from Georgefield Road is growing marihuana. He has marihuana plants in his room upstairs in his house. He also has marihuana plants outside the property in pots. The house is light in colour and visible from the road. There is a wood pile directly across the road from his house. Chad drives a dark coloured small car.

[15] The police did undertake some investigation. For example, Constable Smith learned from CPIC that the accused has two prior convictions, including one in 2008 for possession of 14 grams of marihuana and, through the Justice Enterprise Info Network (commonly known as JEIN) he learned that Mr. Davidson's address was 1950 Georgefield Road. Armed with the exact street address, Constable Briggs was able to do a drive-by and confirm the colour of the house and the location of the wood pile as supplied by Constable McQuaid's source. Constable Smith was also able to conduct inquiries through the Registry of Motor Vehicles and thereby determine that the vehicle registered in the accused's name was a black 1997 Acura, which also conforms to the very general description provided by Source A in paragraph 16. Constable Smith was also able to confirm with Health Canada that the accused is not the holder of a medical marihuana license.

[16] The police did not conduct any investigation to corroborate the criminal matters referenced by Source A. In and of itself, this is not fatal to the Crown's position. As stated previously, it is the totality of the circumstances, viewed in conjunction with the factors enunciated in the cases previously referenced, which is of utmost importance. As noted by Justice MacFadyen in the decision of *R. v. Caissey*, 2007 ABCA 380 at paragraph 23:

> The issue on review is whether there was some evidence that might reasonably be believed to support the issuance of a warrant, not whether there is some guarantee the informant is telling the truth when he makes the allegation of criminal activity. Information of a crime itself being committed does not have to be confirmed.

[17] I am of the view that when the Information to Obtain as a whole is considered it contained a factual basis sufficient to establish reasonable grounds to believe that the marihuana plants and the other items associated with the criminal activity alleged therein would be found, either in the accused's dwelling or environs. The I.T.O. was not based on mere conclusory statements. It contained the personal observations of a trusted source who had supplied reliable information in the past. Some of the descriptors associated with the house, its visibility from the road, the description of Mr. Davidson's vehicle and the existence of the wood pile in the proximity, as well as, Mr. Davidson's prior criminal record involving possession of marihuana, were corroborated by Constable Smith and other of his colleagues.

[18] The failure of the police to conduct other investigations, such as FLIR, or by analyzing current energy consumption at the accused's residence in relation to historical levels, does not mean that their investigation was inadequate. This is so, particularly where the Source merely alleged that the accused was "growing marihuana" on his property and in his home, with no (apparent) indication of the scale of the endeavour. Relatively small production amounts inside the home might not be expected to trigger the disproportionate heat signatures or energy consumption levels necessary to make such investigations or techniques necessarily meaningful. The Applicant/Accused elected not to examine Constable Smith on any aspect of the I.T.O., the process by which it was obtained, or as to whether other investigations could and/or should have been conducted under the circumstances.

[19] I am accordingly satisfied that there was at least some evidence that might reasonably be believed, to support the issuance of the Warrant.

[20] I next consider whether the police met the prerequisites for a telewarrant under s. 487.1 of the *Criminal Code*. The relevant provisions of that section read as follows:

> 487.1 (1) Where a peace officer believes that an indictable offence has been committed and that it would be impracticable to appear personally before a justice to make application for a warrant in accordance with section 256 or 487, the peace officer may submit an information on oath by telephone or other means of telecommunication to a justice designed for the purpose by the chief judge of the provincial court having jurisdiction in the matter.
>
> …
>
> (4) An information submitted by telephone or other means of telecommunication shall include
>
> (a) a statement of the circumstances that make it impracticable for the peace officer to appear before a justice;
>
> …
>
> (5) A justice referred to in subsection (1) who is satisfied that an information submitted by telephone or other means of telecommunication…
>
> (b) discloses reasonable grounds for dispensing with an information presented personally…
>
> may issue a warrant to a peace officer conferring the same authority respecting search and seizure as may be conferred by a warrant issued by a justice before whom the peace officer appears personally pursuant to subsection 256(1) or 487(1), as the case may be, and require that the warrant be executed within such time period as the justice may order.

[21] When a s. 8 violation is alleged on the basis of a failure by the affiant police officer to attend personally before a justice to obtain the warrant, the standard of impracticability must be shown to have not been met. Justice Stewart, in *R. v. Singer*, 2012 NSSC 238 at para. 34, distilled the authorities to the following effect:

> A telewarrant is invalid when the impracticability condition is not proved by a proper factual foundation in the supporting documentation. The affiant must have a subjective belief that it would be impracticable to appear personally before a Justice and this belief must be objectively reasonable.

[22] In *Singer (supra)*, the evidence adduced on amplification disclosed that the officer had always proceeded by way of a telewarrant based on the boiler plate wording used in the I.T.O. No bad faith was found on the part of the affiant. This wording had resulted from a policy directive of a local Provincial Court Judge, who had previously directed the police to attend at the JP Centre in Dartmouth when a telewarrant was sought, so as not to place him in a conflict position with respect to the trial of those cases. That particular Judge was no longer sitting in the area by the time the telewarrant in *Singer* was issued, and no one had bothered to check with the present incumbent as to whether that prior directive was extant. Therefore, the impracticability of attending before the local Justice to obtain the Warrant, much less the necessity and/or impracticability of travelling to Dartmouth for the purpose, had not been demonstrated.

[23] In *R. v. Hill*, Justice MacAdam stated in paragraph 31:

> The purpose of the prior authorization process is to prevent unreasonable searches, not to condemn them after the fact. If the prior authorization process is not vigorously upheld by the courts it will lose its meaning and effectiveness. That process is in place to protect everyone from unreasonable intrusions by the state. In considering this, or any other section 8 case, the Court must not only weigh the rights of the individual, but protect the prior authorization process which helps assure that the rights of all individuals are respected before, not after the fact.

[24] His Lordship noted in a similar vein at paragraph 33 of that case:

> The importance of the process is not to be diminished by the regular avoidance of the in-person application normally associated with obtaining search warrants. The province of Nova Scotia is not so remote as to justify in all instances the use of a telewarrant.

[25] So, too, we have Justice Cromwell, as he then was, in *R. v. Morris* (1998), 134 CCC 3d 539, at page 552:

> The prior authorization process … is quite fragile. When the police attend before a Justice of the Peace, no one, for obvious reasons, is there as an advocate of the interests of the target of the search. The Justice of the Peace will usually not be a lawyer or a Judge. The circumstances under which the warrant is sought may be urgent and the process, of necessity, quite informal. This simply demonstrates that the process depends on two things: the honesty, good faith and diligence of the police when they gather and present their grounds for consideration and the independence and caution of the Justice of the Peace deciding whether to authorize the proposed search.

[26] In the case at bar, the basis for the telewarrant, if it is to be found, must be sought in the area below paragraph 20, which is the only portion of the I.T.O. that purports to address the issue. Therein, Constable Smith states:

> Enfield is approximately 40 kilometres from the Justice of the Peace Centre in Dartmouth, and would take approximately 1.5 hours to drive in and return, with traffic. It would be impractical for me to drive this distance and back for the purpose of making this application.

[27] There is much to be said for the Accused's contention that this is erroneous, both as to the estimate of the distance involved, and the time involved in making the commute. It is much closer to 25 kilometres than it is to 40 and, moreover, the relevant consideration is the trip (one way) to Dartmouth. This is so because, if and when obtained, the Warrant could be returned to the RCMP Detachment in Enfield

by facsimile so as to be immediately acted upon. This one way trip would involve a journey of perhaps one half hour (at the outside), at the time of the evening in question, barring other intervening factors.

[28] Even if I were to accept at face value the distances and times noted by Constable Smith, he does not say why it would be impractical to invest the time and make the trip. For example, there is no reference to an overriding urgency, wherein action must be taken "on the spot" to preserve the evidence expected to be found. There is no reference to obligations that would prevent Constable Smith from taking the time necessary to drive to Dartmouth. There is no reference to inclement weather, or road conditions. Moreover, although "traffic" is cited in the generality, there is no particular reference to anything unusual in that regard for that time of the evening. After 6:30 PM, it is unlikely that there would be traffic on the road sufficient to impede his journey in any meaningful way.

[29] Accordingly, Constable Smith's statement of belief in the "impracticability" of attending in person before the Justice of the Peace appears to be entirely conclusory and unsupported. No facts were provided that would have enabled the authorizing Justice to assess whether the belief, if subjectively held, was objectively reasonable.

[30] The word used in s. 487.1 (and also in s.487.01(7)) of the *Criminal Code* is "impracticable". This requires something more than mere inconvenience, and something less than impossibility. As has been noted above, there is nothing in the document (and nothing has been offered in amplification) to provide a proper foundation upon which to ground the telewarrant process. Moreover, the fact that the Warrant was not executed until the following day (June 20, 2012) appears to fatally undercut Constable Smith's assertions as to the impracticability of his having attended the JP Centre in Dartmouth between 6:30 and 7:00 pm. the evening before.

[31] Accordingly, I conclude that the prerequisites for a telewarrant under s. 487.1 of the *Criminal Code* were not met in this instance.

Remedy

[32] It is implicit in the foregoing that the accused has satisfied me, on the balance of probabilities, that there has been a breach of his s. 8 *Charter* right to security against unreasonable search and seizure, by virtue of what was, in reality, a warrantless search. I shall now consider what remedy, if any, is available to Mr. Davidson as a result.

[33] Section 24 of the *Canadian Charter of Rights and Freedoms* is reproduced in the applicant's brief. To paraphrase, subsection (1) provides him with the opportunity to apply to this Court, as he has done, for a remedy that is "appropriate and just in the circumstances." Subsection (2) requires that I exclude any evidence obtained by virtue of the breach if I conclude that admitting it (as Mr. Davidson contends) would "bring the administration of justice into disrepute." The Applicant again carries the burden on a balance of probabilities.

[34] Counsel have quite properly focussed upon the Supreme Court of Canada decision in *R. v. Grant*, 2009 SCC 32. At the core of *Grant* is the recognition that I must keep in mind three major factors as I consider this issue:

1. The seriousness of the state *Charter* infringing conduct.
2. The impact of the breach on the *Charter* protected interest of the accused.
3. Society's interest in adjudication of the case on its merits.

I will, therefore, consider each sequentially.

[35] As to the seriousness of the state *Charter* infringing conduct, while the concept can be stated quite straightforwardly, its application may be more complex. As noted at paragraph 72 of *Grant* (*supra*):

> The more severe or deliberate the state conduct that led to the *Charter* violation, the greater the need for the courts to dissociate themselves from that conduct, by excluding evidence linked to that conduct, in order to preserve public confidence in and ensure state adherence to the rule of law.

[36] Then, in paragraph 74:

> At one end of the spectrum, admission of evidence obtained through inadvertent or minor violations of the *Charter* may minimally undermine public confidence in the rule of law. At the other end of the spectrum, admitting evidence obtained through a wilful or reckless disregard of *Charter* rights will inevitably have a negative effect on the public confidence in the rule of law, and risk bringing the administration of justice into disrepute.

[37] Further, in paragraph 75, the following was noted with respect to relevance of the presence of police good will in that it may:

> …reduce the need for the court to disassociate itself from the police conduct. However ignorance of *Charter* standards must not be rewarded or encouraged and negligence or wilful blindness cannot be equated with good faith…Wilful or flagrant disregard of the *Charter* by those very persons who are charged with upholding the right in question may require that the court disassociate itself from such conduct. It follows that deliberate police conduct in violation of established *Charter* standards tends to support exclusion of the evidence.

[38] In the case at bar, Constable Smith sought, and ostensibly obtained, authorization before entering Mr. Davidson's residence. The police acted under the auspices of what they considered to be a valid warrant, although I have determined above that the prerequisites of s. 487.1 were not met.

[39] Constable Smith's approach in obtaining the telewarrant (inasmuch as it is possible to determine the issue in the absence of amplification evidence) seemed to have confused the issue of impracticability with his personal convenience. This may be viewed as a somewhat casual approach to the situation, particularly where all knew that the goal was to obtain authorization to search a man's home, a space in which his reasonable expectation of privacy is at its zenith.

[40] However, there is no evidence of bad faith before me. The police proceeded to obtain what they considered to be a valid warrant. I have determined that there was sufficient reliable evidence in the I.T.O. for one to have been authorized. There is no evidence before me as to whether the manner in which Constable Smith went about obtaining the telewarrant, or the pretext that he offered for doing so, was in accord with his customary practice or that of others at his detachment. It follows that there is nothing before me, either in the I.T.O. or by way of amplification, to suggest that either he or his colleagues at the Enfield Detachment were ever warned to discontinue such a practice, if indeed this case is typical of the manner in which they generally went about it. Police officers are expected to know the law touching upon the areas in which they operate, such as the prerequisites for warrants. Failure to follow the law in cases such as this can result in s. 8 violations, as it did here.

[41] That said, when consideration is given to an appropriate remedy, and the first factor in *Grant* is considered, it cannot be said that this was a wilful or flagrant disregard of Mr. Davidson's *Charter* protected rights. My conclusion might well have been different had there been evidence of anything done in the past, either by his superiors or by the Court in previous decisions, to bring to Constable Smith's attention the impropriety of the practice that he followed in this instance. Absent such evidence, the most that can be said (to repeat) is that he was "casual" in his approach (considering the interest at stake), but I am not satisfied that Smith either acted in bad faith or was wilfully blind. This is not a case such as *R. v. Koprowski*, 2005 BCPC 657, where at paragraph 19, the Court found "compelling evidence of a lack of good faith" to go along with what it found to be a "casual" or "careless" attitude on the part of the police.

[42] My analysis of the factors relevant to the seriousness of the state *Charter* infringing conduct therefore favours inclusion.

[43] I next consider the impact of the breach on the *Charter* protected interest of the accused. In *Grant*, *supra*, at paragraph 76, the majority concisely states the broad objectives behind the second factor in that it:

> …calls for an evaluation of the extent to which the breach actually undermined the interests protected by the right infringed. The impact may range from fleeting and technical to profoundly intrusive. The more serious the impact on the accused's protected interests, the greater the risk that admission of the evidence may signal to the public that *Charter* rights, however high-sounding, are of little actual avail to the citizen, breeding public cynicism and bringing the administration of justice into disrepute.

[44] Justice Margaret Stewart had occasion to consider this factor in the course of her very thorough decision in *R. v. Singer (supra)* where, at paragraph 82, she considered the impact of the cumulative breaches of the accused's rights:

> The most serious aspect of the police conduct in this case is the improper intrusion into a private home, relating both to the deficiencies in the search warrant application process and the manner of entry. They do not amount to a deliberate flouting of the charter-protected interests of the accused, but they are more than mere technical violations. Similarly, the violation of the right to counsel, though not malicious, was not inadvertent. In assessing the impact of the search on the accused's charter-protected interests it is important to remember the search could not have occurred legally (**Côté,** supra at para. 73). Here, the charges against Singer are serious and carry the potential for a substantial penalty. The violation of the right to counsel, though not malicious, was not inadvertent. The statements provided to the police are highly incriminating and could be used as evidence to convict him of the offences. These are real and significant impacts on the Charter-protected interests of the accused. The analysis of this factor weighs in favour of exclusion of the evidence.

[45] In the case at bar, we are obviously dealing with police entry into Mr. Davidson's home. This was not an outbuilding, a seasonal cottage, a car, or a mere trunk or receptacle. It was his principal dwelling, and thus the highest expectation of privacy would adhere to it.

[46] What we do not have in this case, however, are the myriad violations of the accused's *Charter* protected rights to be found in *Singer*, supra, and in some of the other cases to which I have made reference. There was one breach in this case, and this occurred when the authorization was granted via telewarrant. Nor have I found that there is evidence before me of a pattern of abuse such as that to which Justice MacAdam referred in *R. v. Hill (supra)* "by the regular avoidance of the in-person application normally associated with obtaining search warrants".

[47] Moreover, this is not a case such as *Singer (supra)* in which the search could not have occurred legally. The factual basis contained in the I.T.O. was sufficient. All that had to happen in addition was for the affiant to attend before the Justice personally, rather than invoke the telewarrant process. Overall, I am not persuaded that the impact of the breach on the accused's *Charter* protected rights requires exclusion of the evidence obtained as a result of the search.

[48] An analysis of the second factor in *Grant (supra)*, therefore, also favours inclusion.

[49] I now come to the final step in *Grant (supra)*, which involves consideration of society's interest in the adjudication of this case on its merits. In *R. v. Lao*, 2013 ONCA 285, Justice Gillese concisely stated at paragraphs 81 and 82:

> 81. As to the third factor, society clearly has an interest in having marihuana grow operations dealt with.
>
> 82. In light of my conclusion that the I.T.O. did contain sufficient foundation to justify the issuance of a warrant, albeit using the wrong procedure, I conclude that exclusion of the evidence in this case would bring the administration of justice into disrepute.

[50] One of the differences in the above referenced case to the one at bar is that, in the former, it was not a principal dwelling but rather in an abandoned dwelling, in which the search took place. Nonetheless, as in *Lao (supra)*, what was obtained by the search of Mr. Davidson's house and property is very reliable so called "hard" evidence, which is absolutely vital to the prosecution's case. It was discovered through a warrant issued by a Justice of the Peace, one which the officers involved believed had been appropriately authorized.

[51] This is not a trivial charge that the accused is facing. As his counsel acknowledges, a custodial sentence, if convicted, is a very real possibility. The public certainly has an interest in having a justice system that is above reproach as noted in *Grant (supra)* at paragraph 84. It also has an interest, as that case acknowledges, in seeking a determination on the merits where the offence charged is serious. Upon review of the considerations that are germane to the third factor in the *Grant* analysis, I conclude that it, too, favours inclusion.

[52] Balancing the foregoing, I have therefore determined that the administration of justice would be brought into disrepute if the evidence were excluded. I therefore dismiss the accused's application under section 24(2) of the *Charter* to exclude the evidence obtained by the police via the search of his residence in this case.