IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Creelman, 2005 NSSC 353

Date: 20051228
Docket: CR 223675
Registry: Halifax

Between:

Her Majesty the Queen
v.

Paul Kenneth Creelman

Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: November 22, 23, 24, 30, December 1, 2005, in Halifax, Nova Scotia

Counsel: Susan Y. Bour, Federal Crown
Warren K. Zimmer for Paul Kenneth Creelman

By the Court:

INDICTMENT

[1] The Indictment charges Paul Kenneth Creelman of 188 Moores Road, Antrim, Province of Nova Scotia as follows:

> 1. THAT on or about the 6th day of February, 2003, at or near Halifax, Regional Municipality of Halifax, Province of Nova Scotia, he did unlawfully have in his possession, for the purpose of trafficking, in excess of three kilograms, Cannabis (Marihuana) a substance included in Schedule II of the **Controlled Drugs and Substances Act**, S.C. 1996, c. 19, and did thereby commit an offence contrary to Section 5(2) of the said **Act**.

[2] The trial commenced November 22, 2005 with a motion by Mr. Creelman's counsel to strike a series of warrants. The main focus is on the warrant introduced as Warrant #3 issued by Provincial Court Judge William B. Digby the 30th of January, 2003 which was issued on the basis of grounds for belief that there were reasonable and probable grounds to believe that certain offences have been and will be committed by Paul Kenneth Creelman, which such belief is set out and incorporated in the affidavit of Detective Constable Michael Grant Sanford, plus in Appendix "A" (28 paragraphs).

[3] The affidavit of Detective Constable Grant Sanford is as follows:

CANADA
PROVINCE OF NOVA SCOTIA

Information to Obtain a General Warrant
(Sec. 487.01 CC)

This is the information of Michael Grant Sanford, Peace Office of Halifax, Halifax Regional Municipality, in the County of Halifax, Province of Nova Scotia, a Peace Officer and member of the Halifax Regional Police,

hereinafter called the Informant, taken before me.

The informant says that the investigative techniques and/or procedures sought to be authorized include: The interception, inspection and seizure of the contents or parts there of, of luggage, other items and their contents transported by Paul Creelman or persons travelling with/or for Paul Creelman, while utilizing air travel. Continuing for a period of the next sixty (60) days from the issuance of this warrant being the 30th day of January 2003 up to and including the 30th day of March 2003 there are reasonable grounds to believe that offences against the Controlled Drugs and Substances Act that:

Paul Kenneth Creelman of 188 Moores Road, Antrim, Halifax Regional Municipality, Province of Nova Scotia, did:

Unlawfully have in his possession, for the purpose of trafficking, cannabis Marihuana, a substance included in schedule II of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, and did thereby commit an offence contrary to section 5(2) of the said Act.

and that the informant believes on reasonable grounds that the said information and evidence, or some part of them are in the premises and appurtenances of Halifax International Airport situated at 1 Bell Boulevard, Enfield, Halifax Regional Municipality, Province of Nova Scotia, hereinafter called the premises.

Grounds for Belief:

See attached Appendix "A"

AND FURTHER THAT information or evidence concerning the said offences will be obtained through the use of a certain device, investigative technique, procedure or doing of anything to wit: The interception, inspection and seizure of the contents or parts there of, in relation to luggage, other items and their contents transported by Paul Creelman or persons travelling with/or for Paul Creelman, while utilizing air travel by the Halifax Regional Police for information and evidence that will assist the investigation by the Halifax Regional Police of the aforementioned offences,

AND FURTHER THAT during an on-going basis over a sixty (60) day period, for the Halifax Regional Police to intercept, inspect and seize the contents or parts there of, in relation to luggage, other items and their contents transported by Paul Creelman or persons travelling with/or for Paul Creelman, while utilizing air travel by the Halifax Regional Police that will further assist in the investigation by the Halifax Regional Police of the aforementioned offences;

THAT if in the course of executing this general Warrant, or at some point after its execution, members of Halifax Regional Police and members of the Royal Canadian Mounted Police, determine that it will not be possible/practicable to follow Paul Creelman and or persons travelling with/or for Paul Creelman, to ensure the movement of contents or parts there of, in relation to luggage, other items and their contents transported by Paul Creelman or persons travelling with/or for Paul Creelman, or some other reason that may arise based on quickly unfolding events in the investigation, investigators may be forced to seize the luggage and or arrest aforementioned persons in possession of the evidence. This is not the intended course of action at this point, and is a mere possibility that is outlined in the grounds to obtain this General warrant so as to fully disclose the direction that the investigation may take based upon the execution of this general warrant.

THAT the Informant believes that to wit: The interception, inspection and seizure of the contents or parts there of, in relation to luggage, other items and their contents transported by Paul Creelman or persons travelling with/or for Paul Creelman, while utilizing air travel by the Halifax Regional Police other than by the use of this device, investigative technique, procedure, or doing of anything would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property.

THAT the Informant believes that there is no other provision in this or any other Act of Parliament that would provide for a warrant, authorization or order permitting the technique, procedure or device to be used or the thing to be done for the following reasons, in particular that:

> the investigative technique, procedure or device or the doing of the thing described in this Information may be conducted on an on-going and continuous basis over a sixty (60) day period due to the amount travel by Paul Creelman.

> the information and evidence cannot be obtained through the provisions of a Search Warrant issued pursuant to section 487 of the *Criminal Code* as there is a requirement for the Information to Obtain a Search Warrant to be sworn in relation to the time present, whereas the information to be obtained by the requested General Warrant in relation to continuous air travel by Paul Creelman;

AND FURTHER THAT the object of this General Warrant is to obtain information and evidence concerning one or more of the offences by intercepting, inspecting and seizing of the contents or parts there of, of luggage, other items and their contents transported by Paul Creelman or persons travelling with or for Paul Creelman, while utilizing air travel. Said items will afford evidence with respect to the commission of one or more offences, and will subsequently be obtained pursuant to Search Warrants pursuant to Section 11 of the Controlled Drugs and Substances Act upon application to a justice at some further date;

THAT the Informant believes that there is no other effective alternative other than through the use of the proposed investigative technique, procedure or device or the doing of the thing described in this Information to intercept, inspect and seize the contents or parts there of, of luggage, and/or other items and their contents transported by Paul Creelman or persons travelling with/or for Paul Creelman, while utilizing air travel. The Informant concludes that the manner described in this Information is the least obtrusive and disruptive to the on-going investigation of the Halifax Regional Police and that it will prove to be most efficient. Therefore th Informant believes that it is in the best interests of the administration of justice to issue the General Warrant;

THAT the Informant concludes that the information and evidence gathered by the proposed investigative technique will reveal the documentary and other evidence

of the alleged criminal offence(s) being investigated by the Halifax Regional Police. This information, in turn, will support applications for Search Warrants pursuant to section 11 of the Controlled Drugs and Substances Act to search for and seizure said evidence;

THAT the Informant states that the bodily integrity of any person shall not be interfered with by the use of the investigative technique, procedure or device or the doing of the thing described in this Information; nor shall any person be observed, by means of a television camera or other similar device, carrying out any activity in circumstances in which the person has a reasonable expectation of privacy;

THAT the Informant concludes there are reasonable and probable grounds to believe that information concerning one or more offences will be obtained through the use of the investigative technique, procedure or device or the doing of the thing described in this Information, and that those reasonable and probable grounds have been set out in this Information.

THAT the Informant believes this application complies with all the requirements for a General Warrant as prescribed by section 487.01 of the *Criminal Code*.

WHEREFORE the Informant prays that a General Warrant authorizing the identified device or investigative technique or procedure as detailed herein be granted;

SWORN before me at Halifax,
Halifax Regional Municipality
in the County of Halifax
Province of Nova Scotia this 30th
day of January A.D. 2003.

____
(sgd) Signature of Informant

____
(sgd) William B. Digby
Judge of the Provincial Court

Appendix A

THAT Constable Michael Sanford, Peace Officer and member of the Halifax Regional Police, (hereinafter referred to as the Informant), has personal knowledge of the matters hereinafter deposed to except where same are stated to be on information and belief, and where so stated I do verily believe the same to be true.

THAT Paul Kenneth Creelman, who resides 188 Moores Road, Antrim, Halifax Regional Municipality, Province of Nova Scotia Date of birth of the 5th day of February, 1964, (hereinafter referred to as Paul Creelman), is trafficking in large quantities of Cannabis Marihuana and other narcotics in the Metro Halifax area.

AND FURTHER THAT The Informant has received information from a confidential human source, (hereinafter referred to as Source “A”) that Paul Creelman utilizes air travel to various destinations within Canada and various other International destinations. Paul Creelman travels abroad for the purposes of Conducting drug transactions and transporting or arranging transportation of Narcotics to the Metro Halifax Area..

AND FURTHER THAT The Informant has Known Source “A” for approximately two years and Source “A” has provided information that has been used successfully in Controlled Drugs and Substances Act (hereinafter referred to as the CDSA) and other warrants. Source “A” freely associates with people who use and sell narcotics and the information that Source “A” has provided has been corroborated by other sources and investigative techniques.

THAT the Informant has been contacted with the last year by Ron Nault, (hereinafter referred to as Mr. Nault) Canada Customs Regional Intelligence officer, who was aware of the Informants interest in Paul Creelman and that he had been contacted by a casual source, who stated that Paul Creelman would be departing on a certain date from Halifax to an unknown destination and returning to Halifax on a certain date.

THAT on several occasions over the past several months the Informant has conducted surveillance on Paul Creelman and has observed him departing and arriving at Halifax International Airport.

AND FURTHER THAT while conducting surveillance on Paul Creelman the Informant has observed him meeting with known drug traffickers.

THAT the Informant received information from a confidential human source, (hereinafter referred to as Source “B”. Source “B” is a past proven reliable source, the Informant has known Source “B” for three years and has acted on the information provided by Source “B” approximately ten times. This information has led which have led to search warrants being granted and charges laid under the Controlled Drugs and Substances Act and Criminal Code. Source “B” freely associates with people who use and sell narcotics and the information that Source “B” has provided has been corroborated by other sources and investigative techniques.

AND FURTHER THAT Source “B” states that Paul Creelman utilizes air travel to various destinations within Canada and various other International destinations.

AND FURTHER THAT Paul Creelman travels abroad for the purposes of Conducting drug transactions and transporting or arranging transportation of Narcotics to the Metro Halifax Area.

AND FURTHER THAT Source “B” stated to the Informant that Paul Creelman has the best price around on “B.C. Bud” (street slang for high quality Cannabis Marihuana, grown in British Columbia) and that he seems to have an unlimited supply.

AND FURTHER THAT Source “B” stated to the Informant that Paul Creelman is living beyond his means, on his involvement with the trafficking illegal narcotics and that he just purchased a new truck that he paid cash for.

AND FURTHER THAT the Informant on numerous occasions has observed Paul Creelman operating a 2002 Green Chevrolet, pick up truck, Nova Scotia License, DRW494.

AND FURTHER THAT on the 22nd day of January, 2003, the Informant queried on Registry of motor vehicle data base for Nova Scotia License, DRW494 and the data base indicated that this vehicle was registered to Paul Kenneth Creelman, Date of birth of the 5th day of February, 1964, who resides 188 Moores Road, Antrim, Halifax Regional Municipality, Province of Nova Scotia.

THAT on the 22nd day of January, 2003, the Informant checked the name of Paul Kenneth Creelman, Date of birth of the 5th day of February, 1964, on the Regionally Applied Police Information Delivery systems, (hereinafter referred to as RAPID) and the Canadian Police Information Centre, (hereinafter referred to as CPIC).

AND FURTHER THAT CPIC is a computerized data base repository maintained by the Royal Canadian Mounted Police in Ottawa, Ontario. It can be accessed through authorized and restricted terminals and by authorized personnel. It is usually accessible by police and law enforcement agencies throughout Canada. This repository records information such as missing and wanted persons, stolen property, criminal records of individuals and accesses records of motor vehicle branches of the various provinces across Canada with regard to driver's license information, names, birth dates, descriptions, addresses, driving records and motor vehicles registered to a particular named individual, through vehicles license numbers. When reference is made to information obtained as a result of a CPIC inquiry.

AND FURTHER THAT RAPID is a computerized data base repository maintained by the Halifax Regional Police in Halifax, Nova Scotia. It can be accessed through authorized and restricted terminals and by authorized personnel. It is usually accessible by employees of the Halifax Regional Police. This repository records information that is collected through the normal course of an investigation including names, addresses, vehicles, birth dates, property, the nature of an investigation and a narrative of the investigation. When reference is made to information obtained as a result of a RAPID inquiry, I believe this information to be accurate.

AND FURTHER THAT Paul Kenneth Creelman, Date of birth of the 5th day of February, 1964 is listed on CPIC as having an alias of 'CREEPY' and the following criminal record:

*Criminal Convictions

1983-11-25	Theft under $200 sec 294(B) CC	$50 I-D 20 days
1984--8-08	Theft under $200 sec 294(B) CC	$50 I-D 20 days
1997-09-08	Driving While Disqualified	
	sec 259(4)(B) CC	$800 & Lic susp 1 yr
1998-01-19	Poss of Proceed of Crime	
	Sec 19.1 NC Act	1 day & $15,000 I-D 2 yrs

AND FURTHER THAT Paul Kenneth Creelman, Date of birth of the 5th day of February, 1964 is listed on R.A.P.I.D. as having an address of 188 Moores Road, Antrim, Halifax Regional Municipality, Province of Nova Scotia.

THAT on the 22nd day of January, 2003, the Informant was advised by Sergeant Doug Brown, Peace Officer and member of the Royal Canadian Mounted Police, (hereinafter referred to Sergeant Brown) who is assigned to the Truro Drug Section of Royal Canadian Mounted Police that Paul Creelman has been a target of their section in the past in relation to a major Marihuana cultivation operation. From discussions with Sergeant Brown and and perusal of the CPIC system I believe that this investigation resulted in a conviction for possession of proceeds of crime under s. 19.1 of the Narcotic Control Act, which is the last noted entry on Paul Creelmans criminal record as set out above. Other charges against Paul Creelman in connection with this investigation were withdrawn.

THAT the Informant knows of no legitimate sources of income for Paul Creelman and has received information from numerous reliable sources and members of the criminal community that Paul Creelmans only source of Income is from illicit trafficking in Narcotics.

THAT on the 30th day of January 2003, the Informant was granted search warrants for Paul Creelmans record of air travel information and evidence of airline reservation transactions and activities of Paul Creelmans from the 1st day of January 2002, up to and including the 29th day of January 2003, inclusive,

AND FURTHER THAT the records retrieved from Air Canada-Tango-Jazz indicated that over the last twelve month period that Paul Creelman used these airlines thirty one times. Twenty one of the trips were to Montreal, Vancouver nine times since June 2002, one Trip to Toronto. The Majority of the trips were three days or less and some trips were to the destination from Halifax and back to Halifax in the same day.

AND FURTHER THAT on the 30th day of January, 2003, the Informant was in conversation with Marlene Schetange, security officer with air Canada-Jazz-Tango, who explained the details of airline reservation transactions and she stated the majority of flights were booked and payed for at the ticket counter just prior to the flight departure.

THAT on the 29th and 30th day of January 2003, the Informant was granted search warrants for Paul Creelmans record of air travel information and evidence of airline reservation transactions and activities of Paul Creelmans from the 1st day of January 2002, up to and including the 29th day of January, 2003, inclusive

AND FURTHER THAT the records retrieved from CanJet indicated that between June 2002 and December 2002 that Paul Creelman used this airline nine times between Halifax, Toronto and Montreal.

THAT these travel patterns are consistent with someone who is transporting and trafficking in Controlled Substances

THAT the Informant verily believes a search of information and evidence concerning the said offences will be obtained through the use of a certain device, investigative technique, procedure or doing of anything to wit: The interception, inspection and seizure of the contents or parts there of, of luggage, other items and their contents transported by Paul Creelman or persons travelling with/or for Paul Creelman, while utilizing air travel by the Halifax Regional Police for information and evidence that will further assist the investigation by the Halifax Regional Police of the aforementioned offences will provide evidence to aid in the investigation of the said charge.

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

LIFE, LIBERTY AND SECURITY OF PERSON

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

SEARCH OR SEIZURE

8. Everyone has the right to be secure against unreasonable search or seizure.

DETENTION OR IMPRISONMENT

9. Everyone has the right not to be arbitrarily detained or imprisoned.

ARREST OR DETENTION

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS/Exclusion of evidence bringing administration of justice into disrepute.

> 24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
>
> (2) Where, in proceeding under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[4] **APPLICATION TO QUASH WARRANTS:**

[5] Counsel for Mr. Creelman attacked the third warrant directly and the remainder as well by raising a number of arguments including the following:

[6] **ARGUMENT NO. 1:**

That the introductory paragraph refers to Constable Sanford speaking of personal knowledge except where stated to be by information and belief. Mr. Creelman's counsel takes the view that the affidavit ought to be drafted in the form required by the *Nova Scotia Civil Procedure Rules* namely, that where a statement is based on information and belief the source should be identified on each and every occasion.

FINDING:

Mr. Creelman's solicitor argued that Constable Sanford's affidavit ought to have followed the form designated by the *Civil Procedure Rules of Nova Scotia* where in individual paragraphs the affiant states the source and repeats his belief in the information from that identified source. It must be remembered that police officers are not lawyers and police offices vary in the resources available to them be it town, municipal, provincial or the R.C.M.P. In addition, many portions of an affidavit in support of obtaining a warrant necessarily fail to identify the source either because it is an anonymous tip through such organizations as Crime Stoppers or from an informant known to the police officer or perhaps even from an undercover agent. In the latter two examples it would be dangerous to provide information that might identify the source. However, where the individual is known, consideration of editing of the information might be appropriate so that the if the court can feel certain that what is expressed will not reveal the informer's identity more details about the source information might be appropriate. Where possible, consistent with security and safety, it would be preferable to identify the source. In the case of an anonymous informant no details should be disclosed

unless there is a basis to conclude that the *innocence at stake* exception applies *R. v. Leipert* 112 CCC (3rd) 385 (S.C.C.)).

While it might be desirable for a police officer to follow the civil requirements noted in such cases as *Waverley (Village) v. Nova Scotia (Minister of Municipal Affairs)* (1993), 123 N.S.R. (2d) 46 and *MacDonald v. Nova Scotia (Workers' Compensation Board)* (1995), 145 N.S.R. (2d) 301, the civil standard is not a prerequisite.

[7] **ARGUMENT NO. 2:**

Constable Sanford failed to bring to the attention of the warrant issuing authority, Judge Digby, that on a previous occasion, October 31, 2002, a search was conducted of baggage in a motor vehicle with Mr. Creelman and a fellow traveller after their departure from the Halifax International Airport and the search produced negative results.

FINDING:

Mr. Creelman's solicitor invites the court to conclude the failure to bring the previous search and negative result to the issuing authority was a deliberate misleading of the issuing authority by Constable Sanford. He refers to a number of cases including *R. V. Innocente*, [1992] N.S.J. No. 235; (1992), 113 N.S.R. (2nd) 256. In that case the informant referred to a known and reliable source of proven reliability in the past in three paragraphs in his supporting affidavit to establish reasonable and probable grounds. The Court of Appeal noted that the conversations referred to came from conversations intercepted by the police as a result of an authorized interception and this fact was not communicated to the Justice of the Peace who issued the search warrant. The paragraphs made reference to obtaining information from previous reliable sources creating the clear impression that the information had been provided by an informant which was not the case. Hallett, J.A. stated:

> I am of the opinion that paragraphs 2, 6 and 8 of the sworn information were misleading and were known to the peace officer to be misleading as to the source of information.

And he went on to state:

> It was the intention of the peace officer to mask the fact that the information was obtained from an intercepted communication.

In the end result the court determined that it could not condone the presentation to judicial officials of deliberately misleading information sworn to as true. As a result in *Innocente* the Court of Appeal confirmed the exclusion of the evidence obtained by the warrant on such foundation. A similar situation arose in *Regina v. Donaldson et al* (1990), 58 C.C.C. (3rd) 294, a decision of the British Columbia Court of Appeal.

I have had the benefit of observing Constable Sanford in the giving of his fairly lengthy testimony. He acknowledged in cross-examination that the existence of the previous search and negative result was relevant and that the failure to include it in the application for subsequent warrant was simply that he did not think of it. I found the evidence throughout of Constable Sanford to be given in a fair, honest and credible manner and this finding applies to the further arguments advanced by Mr. Creelman's solicitor in attacking the warrants. I note also that the basis of the initial search was an informant and that informant was not relied upon in the subsequent application for the warrant on the 30th of January 2003. It would have been of concern to the court if the warrant of the 30th of January 2003 had been issued on the basis of reliance upon the previous informant but such was not

the case. I do not consider that the failure to mention the October 31st, 2002 search fatal by itself, however, it must be weighed in the totality of circumstances and I do so later in this decision.

[8] **ARGUMENT NO. 3:**

That Paul Creelman travelled to various destinations including international destinations was refuted by the fact that there was a lack of specifics provided and Mr. Creelman's passport, that was seized, did not have any international stamps or visas contained therein.

FINDING:

The frequency of travel by Paul Creelman is indicated to a degree in the records obtained from CanJet and Air Canada and its subsidiaries. In addition, informant Source B advised that Paul Creelman utilizes air travel to various destinations within Canada and various other international destinations. The absence of visa or country entry or departure stamps in Paul Creelman's passport was clearly answered in the evidence of Blair MacDonald, a customs investigator,

who has been a Customs inspector for approximately 22 years. Mr. MacDonald outlined the procedure and indicated that most of the times when you examined travel documents you do not see any stamps of entry or departure in foreign countries and he mentioned specifically that with respect to South America it was quite common that there be no such indication in a Canadian traveller's passport. This is also the situation in countries in the Carribean and Cuba in particular was mentioned in evidence. The evidence advanced to the issuing authority in relation to Paul Creelman travelling internationally was limited but did come in part from informant Source B who it was stated to have been a past, proven, reliable source for three years, whose information has been corroborated in the past. The issuing authority would have clearly comprehended the nature and limited extent of information provided on this point and would constitute little weight by itself and some minor weight of corroboration in the totality of the circumstances.

Under this heading I should also deal with the argument raised by Mr. Creelman's counsel that the following provision in Appendix "A" mislead the issuing authority:

> AND FURTHER THAT the records retrieved from Air Canada-Tango-Jazz indicated that over the last twelve month period that Paul Creelman used these

> airlines thirty one times. Twenty one of the trips were to Montreal, Vancouver nine times since June 2002, on Trip to Toronto,. The Majority of the trips were three days or less and some trips were to the destination from Halifax and back to Halifax in the same day.

A similar argument was with respect to the provision reciting the records retrieved from CanJet. At first blush it would seem to suggest that there was attached records corroborating all of the specifics outlined by the informant and in particular the number of trips, destinations, etc. The records are clear and readily stand out that they cover only a three month period. The information as to the number of trips, etc., I reasonably infer comes from Marlene Schetange, security officer with Air Canada as Constable Sanford makes direct reference to his conversation with her and the details provided by her. Ms. Schetange also advised him that the majority of flights were booked and paid for at the ticket counter just prior to flight departure which, according to the evidence is a fairly standard procedure followed by people active in the drug trade. Constable Sandford could have been clearer in his drafting of Appendix "A" but again I am satisfied that there was no intent or attempt to mislead the issuing authority.

[9] **ARGUMENT NO. 4:**

That the reference to informants, Source A and Source B should have been more extensively outlined.

FINDING:

It is clear that information supplied by a reliable informer may provide the requisite reasonable grounds. In *Regina v. Debot* (1986), 30 CC (3rd) 207 the Ontario Court of Appeal concluded that a mere conclusory statement made by an informant would not constitute reasonable grounds.

At page 219:

> . . . Highly relevant to whether information supplied by an informer constitutes reasonable grounds to justify a warrantless search or an arrest without warrant are whether the informer's "tip" contains sufficient detail to ensure it is based on more than mere rumour of gossip., whether the informer discloses his or her source or means of knowledge and whether there are any *indicia* of his or her reliability, such as the supplying of reliable information in the past or confirmation of part of his or her story by police surveillance. I do not intend to imply that such of these relevant criteria must be present in every case, provided that the totality of the circumstances meets the standard of the necessary reasonable grounds for relief.

and further:

> . . . The standard of "reasonable ground to believe" or "probable cause" is not to be equated with proof beyond a reasonable doubt or a *prima facie* case. The standard to be met is one of reasonable probability.

Mr. Creelman's counsel made it clear that he is not attacking in his motion the principle of informer's privilege. It was important for Constable Sanford to indicate that informant Source A and Source B, where known reliable sources, and not anonymous tips. It was appropriate to spell out the length of time that each informant source was known and relied upon by Constable Sanford. In the case of Source A approximately 2 years and Source B approximately 3 years. It was appropriate to set out at least in a general sense the basis of some of their knowledge namely, that both sources have freely associated with people who use and sell narcotics. As to the reliability of Source B, Constable Sanford indicated that he had acted on information provided by Source B approximately ten times and that such information lead to search warrants and charges being laid under the *Controlled Drugs and Substances Act* under the *Criminal Code.* This represents a fairly clear track record of reliability. Mr. Creelman's solicitor at one point argued that the issuing authority ought to have known if either source had a criminal record and that this information should be available. There can be no absolute in this regard. Where it would not give any indication of identity, it might be appropriate for the police officer seeking the warrant to indicate the absence or

presence of a criminal record on informants and perhaps even the sealing of such records by the issuing authority. The failure to do so in this case is certainly not fatal.

[10] **ARGUMENT NO. 5:**

Mr. Creelman's counsel indicates that the statement by Constable Sanford that he had conducted extensive surveillance on Paul Creelman was not borne out by the evidence and similarly that such limited surveillance failed to identify alleged known drug traffickers.

FINDING:

Constable Sanford's evidence in this regard was not particularly satisfactory and far too general. While particulars and specifics might not be appropriate, such a broad statement should not be made without the capacity to back it up somewhat more thoroughly than what was the case here.

[11] **ARGUMENT NO. 6:**

Mr. Creelman's counsel objects to the impression, it says, was given to Judge Digby that Paul Creelman had no visible means of support and yet had a home with a swimming pool, a 2002 green Chevrolet pickup truck, etc.

FINDING:

Counsel for Mr. Creelman spent a great deal of time on this argument, much of which was focussed on what was or was not readily available by way of information from the Canada Revenue Agency as to income tax records of Paul Creelman. Mr. Creelman's counsel takes the position that they were readily available and that where a reliable source was readily available such information ought to have been provided to the issuing authority. Mr. Zimmer's argument is based upon s. 241(4)(e)(v) of the *Income Tax Act*.

In response the Crown called Jeffrey Rafuse, who has been with the Canada Revenue Agency and its predecessors for approximately 17 years. He has been with the Proceeds of Crime Section on a seconded basis and involved in the

Enforcement Audit Program and clearly, over his career, he became very familiar with and knowledgeable of the enforcement access under the *Income Tax Act*. His evidence is clear that there are only two ways in which specific tax payers information/records can be available; (1) where there is a proceeds of crime investigation underway and, (2) where an actual criminal charge has been laid. Neither of these situations existed here as of January 30, 2003.

Jeffrey Rafuse referenced specific sections of the *Income Tax Act*. A warrant for a search of Mr. Creelman's residence produced a 2001 T-4 slip from Royal Flooring showing total income of $4,309.76 and, under cross-examination, the 2002 income reported was substantially higher and, if memory serves me correct, in the range of $24,000. Mr. Creelman is certainly entitled to call into evidence or have it brought forward in cross-examination as to the resources available to him at the time of the issuance of the warrant January 30, 2003. However, the court should not lose sight of the determination for the issuing authority was whether or not there existed reasonable and probable grounds of belief. If the only information advanced was in error then that would clearly cast doubt on whether the prerequisite of reasonable and probable grounds had been established. The informant in this case provided certain background and it is not

for me or the issuing authority to make a definitive determination whether or not Mr. Creelman had sufficient, legitimate resources to maintain a home, purchase a new truck for cash, travel, etc. The information as to his apparent legitimate income in 2001 and 2002 is not by itself very helpful to Mr. Creelman. That is not to say that the information provided on January 30th when the warrant was obtained was by any means conclusive nor was it necessary to establish that Mr. Creelman actually conclusively had no legitimate sources of income or support. Given Mr. Creelman's reported income he would be hard pressed to account for the acquisition of his new truck let alone contribute to any other basics. The Crown takes the position that the income tax records provide amplification.

What is clear is that securing income tax records is not a prerequisite to call into question a person's basic lifestyle where they have no apparent livelihood. The evidence before the issuing authority was of a substantial degree of travel by Paul Creelman. Evidence from Source B that Paul Creelman has the best price around on B.C. bud (street slang for high quality cannabis marihuana, grown in British Columbia) and he seems to have an unlimited supply. Source B references that Paul Creelman just purchased a new truck and paid cash for it and the information for both Source B and Source A is that they both freely associated with people who

use and sell narcotics and that that is the source area for their information which has been corroborated by other sources in the past. I have already commented on the track record of reliability of Source B. The registered ownership of the new green truck was confirmed by Constable Sanford with the Registry of Motor Vehicles. It has not been shown that an unreasonable weight was attached by the issuing authority to the limited information with respect to Paul Creelman living beyond his means. Quite possibl,y police could, with a minimum amount of effort and without encroaching upon the security of their operation, have provided further some basic material such as photographs of the Creelman home, motor vehicle, assessment particulars of his property, etc. I am quick to add that it is not for the court to tell the police how to conduct their professional operations and on this particular aspect, I find no merit in the argument of Mr. Creelman's counsel that the information was unreliable, did not relate what was readily available, etc., etc.

[12] **ARGUMENT NO. 7:**

Mr. Creelman's counsel raises the concern about the criminal convictions of Paul Creelman being presented to the issuing authority particularly those that are outstanding for lengthy periods of time prior to the alleged criminal activity now before the court.

FINDING:

The court finds no impropriety in the informant providing the issuing authority with the criminal record of the person or persons who will bear the brunt of the search if the warrant is issued. It is also appropriate to provide the full record where available and not any condensed version. I have little doubt that the first three convictions bearing no relationship to the subject matter of the warrant would have been of little consequence to the issuing authority. The only point here is that the police informant should not pick and choose and it is up to the issuing authority to attach what weight she/he wishes to the existence of a criminal record. In this case the recent conviction in 1998 was a possession of the proceeds of crime arising out of criminal narcotics activity. The affidavit sets out that Constable Sanford was advised by Sergeant Brown, R.C.M.P. that Paul Creelman has been a target in the past in relation to a major marihuana cultivation operation and this

resulted in the conviction recited under s. 19.1 of the *Narcotic Control Act*. Previous, fairly timely criminal activity in the very field, i.e., drug distribution, sought to be addressed in the warrant is clearly appropriate information to provide the issuing authority.

[13] **ARGUMENT NO. 8:**

Mr. Creelman's counsel maintains the warrants should be quashed due to the extreme delay in filing a report to a justice.

FINDING:

The form of warrant after setting out the authorization with respect to time, date and dates provides, after the expiry of the time period for which the warrant can be exercised, the following:

> . . . thereafter to make a report to me or some other judge for the same territorial division.

The Report to a Justice references s. 489.1 of the *Criminal Code*. However, I do not see any indication there or elsewhere in the *Criminal Code* as to the consequences of not filing the Report in a timely fashion. This argument was raised by Mr. Creelman's counsel very late in the *voir dire* and I did not have the benefit of either counsel providing written representations. I hasten to add that it was quite appropriate for Mr. Zimmer to raise any issue or argument at any time.

s. 487.1 of the *Criminal Code* does give some guidance as to when a report should be filed and its contents and seems to address a specific requirement that if there are things seized the report must indicate if they were in addition to the things mentioned in the warrant and require the officer's belief that these additional things have been obtained or used, in the commission of an offence.

An examination of the exhibit containing the search warrants and associated documents discloses that the first general warrant and related assistance order issued January 29, 2003 in relation to records with CanJet has a report dated June, 2005 and the second and other warrants in relation to Air Canada-Tango-Jazz issued June 30, 2003 have reports dated in June 2005. The main warrant, a general warrant under s. 487.01 of the *Criminal Code* issued January 30, 2003 set out

above in the decision contains a report dated May 19, 2005 and a subsequent report relating to airline records is dated June 3, 2005.

An important thing to note is that the time for which reasonable and probable grounds must exist is the time of issuance of the warrant. It therefore follows that the success of the search has no bearing whatsoever on its validity nor does the post issuance requirement of filing a report. The delay in filing a report is more appropriately addressed under Mr. Creelman's request for an exclusion of evidence pursuant to s. 24.2 of the Charter.

[14] **CONCLUSION- RE: MOTION TO QUASH WARRANTS:**

Search warrants are statutorily authorized investigative aids issued most frequently before criminal proceedings have been instituted. Almost invariable a peace officer prepares the search warrant and information without the benefit of legal advice. The specificity and legal precision of drafting expected of pleadings at the trial stage is not the measure of quality required in an Information to Obtain a Search Warrant.

The appropriate approach for judicial review of an Information to Obtain a Search Warrant, is scrutiny of the whole of the document, not a limited focus upon an isolated passage or paragraph.

An issuing justice is entitled to draw reasonable inferences from stated facts and an informant is not obliged to underline the obvious.

In *R. v. Saunders* (2004), 181 C.C.C. (3d) 268 (Nfld. C.A.) the court directed that a reviewing judge or court must not substitute its opinion or view for that of the issuing justice. Instead, a review court must determine whether there was some evidence upon which the justice **could**, rather than should issue a search warrant.

The general rule as stated by the Supreme Court of Canada in *R. v. Garofoli* (1990), 60 C.C.C. (3rd) 161 is that the reviewing court should not set aside and quash a warrant unless it is satisfied on the whole of the material presented that there was no basis for the authorization.

The test appears to be an examination of the totality of the circumstances and the posing of the question after examining all of the circumstances and discounting the weaknesses or deficiencies in the material advanced to the issuing authority; **could the issuing authority, not withstanding such, conclude reasonable and probable grounds exist?**

In order to appreciate fully the arguments advanced by Mr. Creelman's solicitor, I have reviewed most of them and commented specifically. Acknowledging in some areas there are weaknesses and a preference for a somewhat higher standard, nevertheless, even discounting to the full extent commented on, it is clear that there is more than ample before the issuing authority, Judge Digby, upon which he could conclude reasonable and probable grounds exist and therefore the application to quash the warrants is dismissed.

[15] **CHARTER ARGUMENTS:**

[16] **ARGUMENT NO. 1 - Did Mr. Creelman suffer a breach of his Charter Right to retain and instruct counsel without delay and to be informed of that right?**

The evidence of Constable Paula MacLaughlin is that she was on duty February 6, 2003 at the Halifax Airport working in the Drug Section. Her post was one of surveillance of the green truck subsequently identified as registered and operated by Paul Creelman. She participated in the takedown of Mr. Creelman. In her evidence she went through and identified the 45 exhibits of seized items, including the $9,000 in cash which was behind a microwave in Mr. Creelman's residence, which funds were in a form subsequently identified by a further witness as $1,000 packages which made for easy counting and the manner in which they were folded is consistent with the practice in the drug trade. Similarly, a set of scales was identified and the further witness indicated there presence normally is expected when one is involved in drug distribution.

Constable MacLaughlin was at the police station. Mr. Creelman had been given the police caution and his statement of Charter Rights and at the police station Mr. Creelman requested to call his lawyer, Mr. Warren Zimmer. Constable

MacLaughlin does not recall if Mr. Creelman gave Mr. Zimmer's telephone number or whether she looked it up but, in any event, she made the call to verify that it was in fact for the purpose of exercising his entitlement to speak to counsel. Mr. Creelman was given privacy to speak to counsel. She noted the time lapse and on this call it was approximately 9 minutes and subsequently she dialled Mr. Zimmer's number for Mr. Creelman a second time and this call lasted approximately 2 minutes. About one-half hour later Mr. Creelman asked her to place a third call to Mr. Zimmer and Constable MacLaughlin checked with her supervisor who said that, "he had had enough". Mr. Creelman said that Mr. Burke, a lawyer who shares office and other facilities with Mr. Zimmer had asked Mr. Creelman to call back in one-half hour. However, Constable MacLaughlin indicated there was a concern about jeopardizing the search of Mr. Creelman's home and Mr. Creelman was refused the opportunity for a third call to his lawyer.

FINDING:

It is clear in these circumstances that there is has been no breach of Mr. Creelman's Charter Right in this regard. The police have a legitimate concern that the call, even if it is made to a lawyer does not preclude a communication to a relative, friend, etc., of the accused and that person might well be an accomplice who would by receiving knowledge of the arrest have an opportunity to interfere with the investigative search process. In any event, Mr. Creelman had two opportunities to retain and instruct counsel without delay.

[17] **ARGUMENT NO. 2** - **Having regard to all the circumstance, would the exclusion of the evidence obtained by search and seizure bring the administration of justice into disrepute?**

FINDING:

With respect to the drug seizure, etc., at the Halifax Airport, it is doubtful that Mr. Creelman has established a reasonable expectation of privacy in relation to the place as well as the items that were the subject of the search. It is arguable that a reasonable expectation of privacy is not available when one travels with luggage by air due to security and customs concerns. It is common knowledge that when

one travels by air that your luggage is subject to scrutiny for security reasons, probable canine and x-ray exposure, etc.

In any event, the burden lies upon Mr. Creelman to satisfy the court on a balance of probabilities that there has been a Charter infringement such that a remedy under s. 24(2) of the Charter should be invoked.

Under s. 24(2) Mr. Creelman must satisfy the court on a balance of probabilities, “having regard to all the circumstances that the admission of evidence would bring the administration of justice into disrepute”.

While the court has expressed some concerns with respect to the manner in which the investigative process took place, nevertheless, it has no difficulty whatsoever in determining that having regard to all the circumstances the admission of the evidence would not bring the administration of justice into disrepute. In fact, to exclude the evidence in the totality of the circumstances that exist here, the failure to admit the evidence would in the view of the court bring the administration of justice into disrepute.

[18] **ARGUMENT NO. 3 - Would a delay in filing a report post the issuing of warrants be of such magnitude that the warrants should be quashed?**

FINDING:

I have already commented on this argument as No. 7 in relation to the application to quash the warrants. Counsel have provided me with a some case authority and in particular *R. v. MacNeil*, [1994]. N.S.J. No. 179, a decision of our court and *R. v. S.C.E.C.,* [1998] B.C.J. No. 1446, a decision of the British Columbia Provincial Court.

In *R. v. MacNeil* above, certain documents were seized; notably in relation to the accused's hand writing and the police filed the statutory report pursuant to s. 490(1) and obtained an order to detain the property seized for the statutory period of three months. Nothing was done for almost a year and no application filed to renew the detention order. The initial statutory period of three months was raised in a timely fashion by MacNeil's defence counsel and the position of the accused was that the failure of the police to seek further authorization for the detention of the goods infringed her rights as guaranteed by s. 8 of the Charter. Additionally,

Ms. MacNeil argued that the handwriting obtained from her had been obtained under pretext and should be excluded under s. 24(2) of the Charter. The trial judge found the behaviour of the officers in securing her signatures was acceptable, not devious and could not be classified as, "dirty tricks". The trial judge found that the failure of the police officers to apply for renewal was unlawful and that the accused did not receive the protection she was entitled to. The issue then became a s. 24(2) issue and the court made it clear that the purpose of s. 24(2) is not to prevent police misconduct but where there exists police misconduct which could bring the administration of justice into disrepute to prevent additional disrepute to the administration of justice arising from admitting the evidence. I agree with the trial judge that the court should exclude the evidence if it bears on the fairness of the trial and he concluded that the items seized were real items and that their admission in evidence would not tend to render the trial unfair. I reach a similar conclusion on that aspect in the case before me.

The trial judge in MacNeil went on however to deal with the conduct of the police officers. He stated at paragraph 35:

> In my opinion the conduct of the police officers in this case cannot be described as mere inadvertence of a technical nature. The whole tenor of the manner in

> which the investigation was conducted suggests that the alleged offence did not receive the attention it deserved. After a flurry of activity around February 18, 1992, it appeared little was done until the fall of 1992. No effort was made to comply with s. 490 following the three month period. No application was made to a superior court after a year. When the failure was drawn to the attention of the police officers in July, 1992, the officer replied by saying the items seized were not the accused's property and her rights were not violated. It was eight months after this exchange of correspondence before charges were laid. The police, in my view, unlawfully retained the property for ten months before charges were laid and during that interval, used the property to build the case against the accused.

And further in paragraph 38:

> . . . Other matters took precedence. In fact it was my impression that this investigation was placed on the back burner and I consider the inactivity during the time the property was detained, showed a lack of good faith and constituted a serious violation of Charter rights. The evidence would indicate the police were aware the detention was unlawful. Why would they not move to conclude the investigation and lay the charges at an early date? At that point a strong argument could be made that the failure to apply for renewal before May 18, 1992 was a technical inadvertence due to pressure of work. Instead, they virtually took no steps until they secured a further search warrant in October to search the premises of the bank. Then, inexplicably, they failed to renew the detention period for that warrant in January, 1993.

In this case the conduct of the police does not reach the level contained in the MacNeil case. The items seized were retained and defence acknowledges full and complete disclosure. There is no evidence of improper use of the seized items to build a case against the accused or otherwise. There was no intervention by defence counsel that was ignored and, in fact, it was not until late within the *voir*

dire that it was apparently noticed for the first time that the reports had not been filed in a timely fashion.

I conclude that the failure to file the reports in a timely fashion was by shear oversight and in no way interfered with the accused right to a fair trial with full disclosure and essentially full answer and defence.

I reached the same conclusion as McGivern, Provincial Court Judge, in *R. v. S.C.E.C.,* [1998] B.C.J. No. 1446 at paragraph 7:

> Finally, I shall deal with the third ground advanced by the defence that the officer failed to comply with s. 489.1(1)(b)(ii) of the Code. I agree that the officer had the responsibility to bring the things seized before the Justice or make a report to the Justice. Apparently neither was done. Section 489.1 must however be read together with s. 490. If proceedings have been instituted in which the things obtained may be required, then the Justice could only have directed that the things remained under detention and be preserved until required to be produced for the purposes of this trial. The purpose of s. 490 has been examined by the British Columbia Supreme Court in Dynacomp Business Computers Ltd. v. The Attorney General of Canada, Vancouver Registry #CC850788, [1985] B.C.J. No. 1592 and in R. v. McMillan Bloedel, Vancouver Registry #CC980161, [1998] B.C.J. No. 908. Although both of those cases dealt with applications to return the seized items to the applicants, it was held in each case that the failure to properly comply with s. 490 did not permit the Court to direct that the seized items should be returned. I am satisfied that no Charter rights of the accused have been infringed or denied because of the manner in which the seized items were dealt with before being introduced as exhibits on this application. The charge was laid on September 4, 1997 the same day the search warrant was obtained and executed. The defence has had knowledge of the seizure and has received disclosure of the items seized including a copy of the video tape. Once the charge was laid the responsibility of the Justice was somewhat restricted. However, the Justice ought

to have been satisfied by way of an appearance before the Justice by the prosecutor or the peace officer having custody of the seized items that those items were required for the purposes of a trial. The failure of the prosecutor or the peace officer to comply with the provisions of s. 490, on the circumstances placed before me, does not constitute or provide grounds of an infringement or a denial of the accused's Charter rights as guaranteed by s. 7 or s. 8 of the Charter. Therefore the application must be and it is hereby dismissed.

FINDING:

The motion to quash the warrants is dismissed and as no Charter violation has been established the evidence is admissible. The *voir dire* is now complete and the trial will resume on January 9, 2006 at 9:30 a.m.

J.