SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Taylor*, 2015 NSSC 296

Date: 20151019
Docket: CRH No. 430281
Registry: Halifax

Between:

Her Majesty the Queen

v.

Jared Alexander Taylor

Judge: The Honourable Justice Joshua M. Arnold

Heard: June 29 and August 27, 2015, in Halifax, Nova Scotia

Counsel: Michelle James, for the Provincial Crown
Kevin C. MacDonald, for the Federal Crown
J. Patrick L. Atherton, for the Defendant

By the Court:

[1] Jared Alexander Taylor stands charged with a variety of drug and weapon related charges, specifically:

1. THAT on or about 5 June 2013, at or near Eastern Passage, NS, Province of Nova Scotia, he did unlawfully have possession of Cocaine, for the purpose of trafficking, a substance included in Schedule I 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. THAT he on or about the 5th day of June, 2013 at, or near Eastern Passage, in the County of Halifax in the Province of Nova Scotia did unlawfully have in his possession a weapon or imitation of a weapon, to wit., ".32 calibre revolver" for a purpose dangerous to the public peace or for the purpose of committing an offence, contrary to Section 88(1) of the *Criminal Code.*
3. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did unlawfully have in his possession a firearm, to wit., ".32 calibre revolver" without being the holder of a license under which he may possess it or the holder of a registration certificate for the firearm, contrary to Section 91(1) of the *Criminal Code*.
4. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did possess a firearm, to wit., ".32 calibre revolver" knowing he was not the holder of a license or the holder of a registration certificate for the firearm, under which he may possess it, contrary to Section 92(1) of the *Criminal Code*.
5. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did possess a loaded prohibited firearm and was not the holder of an authorization or license and registration certificate under which he may possess the said firearm, contrary to Section 95(1) of the *Criminal Code*.
6. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did possess a firearm to wit., ".32 calibre revolver", knowing that it was obtained by the commission in Canada of an offence contrary to Section 96(1) of the *Criminal Code of Canada*.
7. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did have in his possession a firearm, to wit., ".32 calibre

> revolver", while he was prohibited from doing so, by an Order of Probation, dated at Halifax, Nova Scotia on the 4th day of April, 2013 contrary to Section 117.01(1) of the *Criminal Code*.
>
> 8. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did while bound by a Probation Order made by a Justice of the Youth Court in and for the Province of Nova Scotia on the 4th day of April, 2013, wilfully fail to comply with such order, to wit., "to keep the peace and be of good behaviour;", contrary to Section 137 of The Youth Criminal Justice Act.

Overview

[2] On this application the accused advances various *Charter* arguments, including claims that his rights under ss. 8 and 9 have been violated, and for exclusion of evidence under s. 24(2).

[3] On June 5, 2013, RCMP members arrested three occupants of a pickup truck for drug trafficking. Jared Taylor was one of those arrested. During a search of Mr. Taylor incident to the arrest the police found new plastic packaging, one tinfoil ball containing 4.1 grams of marijuana and one plastic bag containing 0.5 grams of marijuana hidden in his underwear. Additionally, Travis Hardiman, the passenger seated furthest to the right, immediately adjacent to Mr. Taylor, was searched and in his right hand were found two five-dollar bills. A sandwich bag containing 8.4 grams of marijuana was found in his underwear. A black LG cell phone and a wallet containing cash were also seized from that person.

[4] When the truck was searched, the RCMP located another tinfoil ball, containing one gram of marijuana as well as a napkin containing 4.1 grams of

marijuana in the glove compartment. A black LG cell phone was found where Mr. Taylor had been sitting. A new white iPhone was also found under the seat cover where he had been sitting. An older broken iPhone was found plugged into a charger on the driver's side of the truck. A fake iPod case was found in the passenger door. That false case actually housed a digital scale with marijuana residue on it. Found in a passenger door pocket was a steak knife with marijuana residue on it. A large freezer bag with marijuana residue was located inside the driver's door pocket.

[5] The RCMP then attended at Mr. Taylor's residence and, because they wanted to clear the premises while awaiting the provision of a search warrant, the police did a walkthrough of the residence.

[6] Cst. Stephen John Edward Beehan ("Cst. Beehan") subsequently prepared an Information to Obtain a Search Warrant ("ITO") in an effort to obtain a search warrant for Mr. Taylor's home. The ITO alleged that a search of the residence would "yield further evidence to support charges under the CDSA". The search warrant was granted, allowing the police to enter and search 19 Garrison Drive, Eastern Passage, Halifax Regional Municipality, Nova Scotia.

[7] Pursuant to the warrant the police conducted a search of the residence. During the course of the search of Mr. Taylor's bedroom the police seized 60.7 g of crack cocaine, new bulk packaging material, used marijuana packaging material, a large quantity of tinfoil, scales, a machete and a gun.

[8] The Crown called two police witnesses on this application. Constable Beehan and Cpl. Tyson James Nelson ("Cpl. Nelson"). The Defence called no evidence.

Issues

[9] On this application, the Defence allege that:

- the initial arrest of Mr. Taylor in the pickup truck was improper and therefore his s. 9 *Charter* right to be free from arbitrary detention was breached.

- any search of Mr. Taylor was unreasonable and a violation of his s. 8 *Charter* rights.

- any evidence seized as a result of the alleged arbitrary detention and improper search should be excluded in accordance with s. 24(2) of the *Charter*.

- the walkthrough of 19 Garrison Drive was a warrantless search, the search was unreasonable, and any items seized from that address subsequent to the walkthrough should be excluded.

- certain paragraphs of the ITO should be excised rendering the ITO deficient. The Defence further argue that if the ITO is deficient, the search warrant should not have been issued, the search of 19 Garrison Drive was therefore unreasonable.

- any seized evidence should be excluded in accordance with s. 24(2) of the *Charter*.

- even if the ITO remains intact there were no reasonable and probable grounds to believe drugs or other evidence of criminal activity would be located at 19 Garrison Drive on June 5, 2013, and therefore the search warrant should never have been granted. The search was therefore conducted illegally and in violation of Mr. Taylor's s. 8 *Charter* rights.

- any seized evidence should be excluded in accordance with section 24(2) of the *Charter*.

Relevant *Charter* Sections

[10] Section 8 of the *Canadian Charter of Rights and Freedoms* states:

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

[11] Section 9 of the *Canadian Charter of Rights and Freedoms* states:

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

[12] Section 24(2) of the *Canadian Charter of Rights and Freedoms* states:

> Where, in proceedings 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.

The Evidence

[13] Evidence was called by the Crown on this application. The Court heard from Cst. Beehan, the lead investigator and author of the ITO and Cpl. Nelson, who assisted Cst. Beehan with surveillance. Additionally, the ITO and the warrant

were put into evidence. The search warrant in this case is a presumptively valid court order. The Defence application challenges the validity of the search warrant. In order to determine the validity of the search warrant on this *Charter* application a careful review of each paragraph of the ITO must be undertaken following the hearing of the amplification evidence.

Constable Beehan

[14] Constable Beehan testified that as of June 5, 2013, he had been with the RCMP for approximately four years. On June 5, 2013, he was working in the street crime enforcement unit. That unit works in plainclothes and operates unmarked vehicles in the Halifax area. That units' mandate is to investigate mid-level drug dealers as well as chronic and prolific offenders.

Personal Information

[15] Constable Beehan testified that during the two years prior to June 5, 2013, he had encountered Jared Taylor in person in relation to various investigations, two of which involved drugs. About thirteen months before June 5, 2013, Cst. Beehan was involved in the execution of a search warrant in Eastern Passage. Mr. Taylor was found in that residence (which was not his own home) with nine individual packages of cocaine weighing a total of 7.5 grams hidden in his underwear, along with a couple of grams of marijuana. Aside from the drugs found on Mr. Taylor's person, more than 60 grams of crack cocaine were found in the house. Cst. Beehan testified that he was therefore aware Mr. Taylor had previously been involved in drug trafficking and had a close association with other drug traffickers.

Source Information

[16] Constable Beehan said that about six months prior to the search of June 5, 2014, he began receiving information from a confidential informer who advised him that Jared Taylor was selling marijuana and cocaine and had a gun. During that same six-month period Cst. David Harding of the Halifax Regional Police advised Cst. Beehan that a confidential informer he was working with also advised that Jared Taylor was trafficking in cocaine and marijuana and had a gun. Constable Harding told Cst. Beehan that his informant stated that Jared Taylor had other people driving him around for the purpose of selling drugs.

[17] Constable Harding told Cst. Beehan that on June 5, 2013, his source advised that within the past week Jared Taylor had been in possession of marijuana for the purpose of trafficking.

[18] Constable Beehan testified that based on his previous experience he believed that Mr. Taylor's activity as described by the informers was consistent with what police refer to as a dial-a-dope operation, that is, trafficking drugs through a delivery system. The drug trafficker maintains a stash house or location where they leave a large portion of their drugs rather than taking the whole amount out at once. This is done so that if they are robbed or stopped by the police they do not

lose the entire drug stash. The trafficker then takes a smaller amount to the purchaser and returns to the stash house to replenish the drugs for sale through delivery. Having someone drive the main trafficker for the purpose of selling drugs, as described by the informant, is consistent with what Cst. Beehan knew as a dial-a-dope operation.

June 5, 2013

[19] On June 5, 2013, Cst. Beehan was driving his unmarked police vehicle at about 11:30 a.m. along Shore Road in Eastern Passage, when he saw a white Chevrolet or GMC pickup truck, with a single bench seat, approaching him. As the truck approached and passed by Cst. Beehan saw that Kyle Osborne was driving, Jared Taylor was seated in the middle of the front seat and Travis Hardiman was seated closest to the passenger door. Constable Beehan was familiar with all three of those individuals. By the time he turned his vehicle around to follow the truck he was unable to locate it.

[20] Constable Beehan called Cpl. Nelson to help him locate the truck. Corporal Nelson was also driving an unmarked police vehicle and was wearing plainclothes. Because Cst. Beehan had been advised by Cst. Harding that Mr. Taylor had drugs in his possession for the purpose of trafficking within the past week, and because

he had just observed Mr. Taylor being driven by others in a manner consistent with what the source informants had indicated was his method of drug trafficking, he and Cpl. Nelson decided to look for Mr. Taylor and the white pickup truck.

[21] Constable Beehan and Cpl. Nelson drove to separate locations to try to reacquire the truck. They were looking for any suspicious activity associated with that vehicle or its occupants. At 2:30 p.m. Cpl. Nelson radioed to advise that he thought he had located the truck across from Oceanview School, next to a skate park. On arriving, Cst. Beehan saw the same three individuals seated in the same positions in the truck. There were two unknown pedestrians standing outside the truck. Constable Beehan drove past and out of sight. Corporal Nelson continued to watch the truck from a parked location and described to Cst. Beehan a brief interaction between the pedestrians and the occupants of the truck. Then the pedestrians left and the truck pulled away.

[22] The truck drove to Caldwell Road. Corporal Nelson followed it. He radioed that the truck had turned onto Cow Bay Road and into a store parking lot. Constable Beehan hid in a church parking lot in an effort to watch the truck at the store. The truck then pulled out of the store parking lot and drove a short distance up Cow Bay Road. It pulled in front of a driveway at 422 Cow Bay Road.

Corporal Nelson advised Cst. Beehan that he was up the road with a view of the truck from the other side of the road. Cst. Beehan could see the truck as well, and saw a teenage female with blonde hair and a backpack walking along Cow Bay Road toward it. She went up to the passenger side of the truck briefly. He did not see a transaction occur. However, during the short period of time that she was at the passenger side of the truck, Cpl. Nelson advised Cst. Beehan that he had witnessed a hand-to-hand transaction between the blond girl and the truck's occupants he was confident was a drug deal.

[23] Constable Beehan said he then saw the truck quickly pull onto Cow Bay Road and drive away. As it passed he manoeuvred his vehicle to follow and conduct further surveillance. The truck turned from Cow Bay Road onto Garrison Drive. Mr. Taylor's residence was known to police to be 19 Garrison Drive. Constable Beehan believed that Mr. Taylor had just been involved in a drug transaction and was going back to 19 Garrison Drive, now the suspected stash house, either to pick up more drugs or drop off cash. He felt this was consistent with what the confidential informants had described about Mr. Taylor's drug dealing and was also consistent with the methods used in dial-a-dope operations generally.

[24] Constable Beehan decided to pull over the white pickup truck and arrest the occupants. Constable Beehan activated his vehicle's emergency equipment and pulled the truck over in front of 53 Garrison Drive. The occupants were removed from the vehicle and read their *Charter* rights and police caution. Constable Beehan was concerned because Jared Taylor's father was behind them at the traffic stop. He was not aware that Jared Taylor did not live with his father at the time. 19 Garrison Drive was only a short distance away from 53 Garrison Drive and the takedown was public and visible. Constable Beehan was concerned that anybody who was at 19 Garrison Drive would now be aware of the traffic stop due to the proximity and very public nature of the takedown. These factors led Cst. Beehan to be concerned that individuals at 19 Garrison Drive could be alerted to police involvement and destroy evidence before a search warrant was obtained.

[25] It was also of concern to Cst. Beehan that when the truck and its three occupants were searched, no gun was found. Two confidential informants had indicated that Mr. Taylor had a gun.

[26] Cst. Beehan testified that prior to asking two police officers to stand outside 19 Garrison Drive to preserve the scene while awaiting a search warrant, he wanted to ensure that no one was inside the residence, since there was potential for

destruction of evidence. Also he was concerned about the possibility of someone inside 19 Garrison Drive having a gun, which raised officer safety issues. Therefore, Cst. Beehan went directly to 19 Garrison Drive to secure or clear the house. He knocked at the door, which was answered by Wayne Philpott. He advised Mr. Philpott that Jared Taylor was in custody in relation to a drug investigation, the police would be obtaining a warrant to search the house and they wanted to make sure there was nobody else in the house. Mr. Philpott accompanied Cst. Beehan as he walked through the residence, quickly checking each room to ensure there was nobody else in the house. During the walkthrough, Cst. Beehan noticed a bedroom that had a metal plaque on the door that read "Jared". Once the walkthrough was complete, Cst. Beehan locked the back door and then both he and Mr. Philpott exited through the front door.

[27] At some point, Mr. Philpott told Cst. Beehan that he had little to do with Jared Taylor because of "Jared's activities". He also stated that Mr. Taylor had a safe in his room. The presence of a safe was significant to Cst. Beehan. He felt that if Mr. Taylor was using his residence as a stash house the safe could hide drugs and/or money derived from drug sales.

[28] The house having been cleared of all occupants by Cst. Beehan, two police officers arrived to watch the front of the house while awaiting the search warrant. Constable Beehan returned to the police detachment to prepare the ITO.

[29] Constable Beehan confirmed on cross-examination that there is nothing in the ITO to indicate that his various confidential sources ever identified where Jared Taylor may have stored his gun or his drugs. He confirmed that drug traffickers may use locations other than their residence as a stash house. On this topic, during cross-examination, Cst. Beehan stated:

> Q. Just a couple of questions. First of all, your various sources did not identify where Mr. Taylor might have had either his weapons or his… his drugs, correct?
>
> A. There's nothing in the ITO that references that.
>
> Q. Ok. When you refer to the concept of stash house, you weren't aware at that time that might… put it this way, very often drug traffickers use another location, other than their residence, correct?
>
> A. That does occasionally happen, yes.
>
> Q. Now obviously the reason for that is to avoid precisely what has happened in this case, correct?
>
> A. Exactly.
>
> Q. Alright. So at this time, you really had no concrete information that Mr. Taylor was using 19 Garrison as a stash house, correct?
>
> A. There was no source information that would directly link it, however given the observations that date, and they appeared to be going toward Mr. Taylor's residence. And again, with the sources telling me he had the gun, these other things, when they weren't present in the truck and these other things that I had seen before, or known that him to have I should say, were not present in the truck, the fact that he was travelling toward his residence on that street led me to believe that he was going there for that purpose.

Corporal Nelson

[30] At the time of the search on June 5, 2013, Tyson James Nelson was an RCMP Constable. He was later promoted to Corporal, his rank when he testified. When he testified, Cpl. Nelson was the detachment commander at the Ingonish RCMP detachment. He had been a police officer for almost 10 years. Prior to being stationed at Ingonish, he served five years with the Halifax Street Crime Enforcement Unit in a plainclothes capacity. That assignment included investigations into street crime, shoplifting, break and enter and what he described as lower-level dial-a-dope operations.

[31] Corporal Nelson described dial-a-doping as selling drugs from other than a fixed location. It could involve a seller walking around selling drugs on foot or driving around and selling drugs from a vehicle. Generally, Cpl. Nelson described dial-a-doping as involving a trafficker who usually carries a cell phone, makes contact with a purchaser, makes arrangements as to where the purchase will take place, and then delivers the drugs.

June 5, 2013

[32] On June 5, 2013, Cpl. Nelson was working in a plainclothes capacity. At noon hour he was contacted by Cst. Beehan, who advised that he had been driving in Eastern Passage and had seen a white GMC pickup truck with three occupants, Kyle Osborne, Jared Taylor and Travis Hardiman, whom he believed might be trafficking in controlled drugs through a dial-a-dope operation. Constable Beehan advised Cpl. Nelson of the information he had received from confidential informants. Corporal Nelson had knowledge of one of the truck's occupants from a previous arrest he had made. At approximately 1:00 p.m. Cpl. Nelson and Cst. Beehan took separate vehicles to Eastern Passage looking for the white pickup truck.

[33] Corporal Nelson observed Mr. Hardiman involved in a drug transaction and assisted in the takedown and arrest of the truck's occupants.

Was the arrest of Jared Taylor improper?

[34] On direct and cross-examination, Cpl. Nelson discussed his observation of what he believed to be a drug transaction at 422 Cow Bay Road as follows:

> Direct Examination:
>
> A. …So, I was expecting if this was going to be a drug transaction at this house, that somebody was going to come out of the house, go to the passenger door, and there would be a transaction and the person would go back in. After a few

minutes, I was surprised that nobody had come out. I started realizing that there was a large number of young people walking around with backpacks and I figured that a school had just let out. So I figured that maybe one of these kids were going to come home and a transaction would happen with somebody on foot. About 2:36 p.m. I saw a single female, blonde, walking up Heritage Hills from behind me. She had a backpack on. As she walked past my vehicle, she looked up at the house and she stopped for a second. And as soon as she realized, as soon as she saw that the truck was there, she ran across the road, across the yard and up to the, that black truck's passenger side.

As she was running up across the yard, the far right passenger of the truck, I could see that person turn into the middle of the truck and I could see through the back window of the truck that the middle passenger turned towards that, that far right passenger. The way that they turned together and looked at each other and I could see that the far right passenger's right hand and right arm went into the truck, I thought that the middle passenger passed something to the far right passenger.

As soon as the female got up to the truck, she ran right to the side of the truck. She already had something in her right hand. The far right passenger put his right hand out the window. She passed something, she passed something with his right hand to the far right passenger and he passed something with his right hand to her left hand out the passenger window at the same time. And as soon as that transaction happened – it took less than a second – she ran from there into the house and the truck left immediately.

. . .

A. And his right hand came out and met her left hand. It was… They… It was like they each had a fist going to each other that they were holding between their thumb and their finger, that they were passing to the other person in the exact same manner. And on both hands was the same thing. The transaction happened in a very short…like, like I said, less than a second or a second. And as soon as the transaction was done, there was no talking. She just turned and ran around the front of the truck, into the door of that residence. The truck backed up, turned around, and left. Turned right on Cow Bay Road, going towards, down towards the water, I guess.

Q. Alright. And when you saw this exchange, did you form any view as to what you were seeing at that point?

A. I, I've seen many hand to hand drug transactions in the past. I had, was under the belief that the far right-hand passenger of that truck just sold drugs to the, that female and that she, she was receiving drugs and he was receiving cash and that she ran back into the house.

Q. Ok. Just so that we're clear, do you recall how long the female was there? You talked, described this transaction. How long did that take, the transaction?

A. Less than, like, it was just, it was immediate. It was just, as she came up she already had money in her hand, or sorry, she had something in her hand. She passed it to him, he passed it to her, and she turned and… she wasn't even walking, she was running. She, from the, she was walking up the road behind me. As soon as she saw the truck, she ran across the road, ran to the truck, and she didn't even walk after the truck, after the transaction was happened. She ran into the house. That was another indicator to me that, you know, the transaction happened and in most cases in dial-a-dope transactions, hand to hands, the trafficker and the user want to get away from the position that the trafficking happened so if the police are around, they don't get caught together.

Cross-examination:

Q. There isn't? Ok, and what would you say the distance is between you and the truck? 150 feet, that sound about right?

A. Between 100 and 150, yes.

Q. Yes. And the girl, upon seeing the truck there as I understand it, runs across the street?

A. Yes.

Q. And she's at the passenger window?

A. Yes.

Q. And, as I understand it, you, the right passenger looks at the centre passenger?

A. Yes.

Q. You think he moves his arm in, but you're not sure?

A. No, he moved his arm in.

Q. He moved his arm in. Was that because he had his arm out like that?

A. I can't remember.

Q. You can't remember. But you were observing the arm?

A. Yes, when, when he turned, he turned his body towards the middle passenger.

Q. Yes?

A. His right hand and right arm moved into the middle of the truck as well.

Q. Ok. But that's all you can say you saw.

> A. That's correct. I saw through the back window, I could see the middle passenger towards turn, turn toward him, but that's all I saw.
>
> Q. Ok. So you're not sure if there was any contact other than turning towards each other, the middle passenger and the right passenger. Correct?
>
> A. That's correct.

[35] The young blond girl with the backpack was subsequently identified as Amber Matthews ("Ms. Matthews"). Ms. Matthews came up to the truck window and handed something to the passenger closest to the passenger side window, Mr. Hardiman, while simultaneously Mr. Hardiman handed something to her. Ms. Matthews then went into 422 Cow Bay Road.

[36] With respect to what happened after the transaction with Ms. Matthews, Cst. Beehan testified that:

> So, we, the truck then quickly pulled out and started to drive away. And the truck came… it backed out onto Cow Bay Road and went down toward the harbour, so it crossed in front of me. I pulled out then behind the truck and began doing surveillance as Cst. Nelson was catching up behind me. We started to follow the truck and our, I think our original intention was to continue to perform surveillance. However, when the truck came down Cow… Cow Bay Road and turned onto Garrison Drive, we, I certainly felt and I believe the conversation, the radio with Cst. Nelson was that he felt that the truck was going back to Jared Taylor's house. Which, again, is consistent with what the informers were saying, with dial up dope operations.
>
> So I concerned that he was going back to the stash house to either pick up more drugs or drop cash off, so that's when we made the decision to execute the traffic stop on the vehicle. So I pulled up, I activated my lights and siren and I was behind the vehicle. The vehicle pulled over in front of 53 Garrison Drive, and Cst. Nelson came in front of and blocked the front of the truck. I went up to the driver side, Cst. Nelson went up to the passenger side, and as soon as he got up to the passenger side of the truck he said you're all under arrest for trafficking;.

[37] Corporal Nelson testified that:

As soon as she saw the truck, she ran across the road, ran to the truck, and she didn't even walk after the truck, after the transaction was happened. She ran into the house. That was another indicator to me that, you know, the transaction happened and in most cases in dial-a-dope transactions, hand to hands, the trafficker and the user want to get away from the position that the trafficking happened so if the police are around, they don't get caught together.

Q. And so you observe her going into the house and then the truck is there. So what happens next?

A. The truck backed up. There's a, there was a turning spot in the driveway as well. They backed up and was able to turn around, and then they pulled out of the driveway. Turned right onto Cow Bay Road. I was stuck, cause I had a left-hand turn out of Heritage Hills to get out. There was cars blocking me in and it was light to medium traffic but it was enough that it was blocking me. I couldn't get out. So I radioed down to Cst. Beehan. I could see the truck going down towards the intersection and then when Cst. Beehan radioed to me to say that he had the truck, I was able to get out. I'd followed behind. We were waiting, we were trying to wait until we had a spot where we could be together to stop the vehicle and arrest the occupants of the vehicle for trafficking. I couldn't get caught up. And then he radioed to me to tell me that the vehicle was turning down… It appeared to Cst. Beehan that they were headed towards Jarrod Taylor's residence, 19 Garrison. So I was able to clear up a little bit from the vehicles I was following and I started speeded up. And I told him take them down before they got to the house and I would get there as soon as I could. So Cst. Beehan activated his lights, pulled the vehicle over, and I drove up behind and blocked the vehicle in in the front with my vehicle.

Q. Ok, and were your lights activated, Officer?

A. Yes they were.

Q. So can you describe, you said 19 Garrison, and where did the stop occur, approximately?

A. It was up the road some. I think I remember noting 53, I think it was. Around 50 mark of Garrison. It was in visual range of his residence.

Q. Ok. Visual range of 19?

A. Yes.

Q. Ok. So can you just tell us what you did at that point?

A. I got out of my vehicle and went around the back, and I went to the passenger side because Beehan was walking up to the driver's side. And I can't remember what Beehan was saying, but the passenger window was still open and as soon as I got to the passenger window, I looked at all three occupants and I said you guys are under arrest for trafficking.

The Law Governing Arrest

[38] Section 495(1) of the *Criminal Code* states:

> 495. (1) A peace officer may arrest without warrant
>
> (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
>
> (b) a person whom he finds committing a criminal offence; or
>
> (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

[39] Section 5 of the *Controlled Drugs and Substances Act ("CDSA")* states:

> *Trafficking in substance*
>
> 5. (1) No person shall traffic in a substance included in Schedule I, II, III or IV or in any substance represented or held out by that person to be such a substance.
>
> Possession *for purpose of trafficking*
>
> (2) No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III or IV.

[40] In the leading case of *R. v. Storrey*, [1990] 1 S.C.R. 241, Cory J. speaking for the court, said at pp. 249-251:

> Section 450(1) makes it clear that the police were required to have reasonable and probable grounds that the appellant had committed the offence of aggravated assault before they could arrest him. Without such an important protection, even the most democratic society could all too easily fall prey to the abuses and excesses of a police state. In order to safeguard the liberty of citizens, the *Criminal Code* requires the police, when attempting to obtain a warrant for an arrest, to demonstrate to a judicial officer that they have reasonable and probable grounds to believe that the person to be arrested has committed the offence. In the case of an arrest made without a warrant, it is even more important for the

police to demonstrate that they have those same reasonable and probable grounds upon which they base the arrest.

The importance of this requirement to citizens of a democracy is self-evident. Yet society also needs protection from crime. This need requires that there be a reasonable balance achieved between the individual's right to liberty and the need for society to be protected from crime. Thus the police need not establish more than reasonable and probable grounds for an arrest. The vital importance of the requirement that the police have reasonable and probable grounds for making an arrest and the need to limit its scope was well expressed in *Dumbell v. Roberts*, [1944] 1 All E.R. 326 (C.A.), wherein Scott L.J. stated at p. 329:

> The power possessed by constables to arrest without warrant, whether at common law for suspicion of felony, or under statutes for suspicion of various misdemeanours, provided always they have reasonable grounds for their suspicion, is a valuable protection to the community; but the power may easily be abused and become a danger to the community instead of a protection. The protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called on before acting to have anything like a *prima facie* case for conviction; but the duty of making such inquiry as the circumstances of the case ought to indicate to a sensible man is, without difficulty, presently practicable, does rest on them; for to shut your eyes to the obvious is not to act reasonably.

There is an additional safeguard against arbitrary arrest. It is not sufficient for the police officer to personally believe that he or she has reasonable and probable grounds to make an arrest. Rather, it must be objectively established that those reasonable and probable grounds did in fact exist. That is to say a reasonable person, standing in the shoes of the police officer, would have believed that reasonable and probable grounds existed to make the arrest. See *R. v. Brown* (1987), 33 C.C.C. (3d) 54 (N.S.C.A.), at p. 66; *Liversidge v. Anderson*, [1942] A.C. 206 (H.L.), at p. 228.

In summary then, the *Criminal Code* requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically they are not required to establish a *prima facie* case for conviction before making the arrest.

[41] In *R. v. Crocker* 2009 BCCA 388; [2010] 1 S.C.R. viii (leave to appeal refused), the British Columbia Court of Appeal made the following comments about arrest and searches incidental to arrest:

> **73** The Crown submits the trial judge erred in law by finding the searches incidental to Mr. Crocker's arrest on February 9, 2007, including the search of his person, backpack, Cavalier and stolen vehicle, were unreasonable because Cst. Frye did not have reasonable grounds to arrest him. The reasonableness of a search incidental to arrest is premised on (i) the lawfulness of the arrest, (ii) the connectedness of the search to the arrest, and (iii) the manner in which the search is carried out: *R. v. Storrey*, [1990] 1 S.C.R. 241, and *Stillman*.
>
> **74** Section 495(1) of the *Criminal Code* provides:
>
> > A peace officer may arrest without warrant
> >
> > > (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
>
> The term "reasonable grounds" in s. 495(1) means reasonable and probable grounds.
>
> **75** In this case, Cst. Frye arrested Mr. Crocker for the hybrid offence of escaping lawful custody. That offence is potentially an indictable offence. On February 6, 2007, Mr. Crocker was lawfully arrested for possession of a controlled substance and subsequently fled from Cst. Johnson's lawful custody. These facts are not in dispute.
>
> **76** The central issue in this ground of appeal is whether the trial judge erred in finding that Cst. Frye did not have reasonable grounds to believe that the individual he arrested for escaping lawful custody was the same individual who had been arrested by Cst. Johnson on February 6, 2007, and who had fled his custody.
>
> **77** The test for reasonable grounds to arrest includes both a subjective and objective element. The arresting officer must have an honest belief that the individual to be arrested has committed an indictable offence and there must be objective or reasonable grounds to support that subjective belief. See *R. v. Bernshaw*, [1995] 1 S.C.R. 254 at para. 48, *Stillman* at para. 28, and *Shepherd* at para. 17. Reasonable grounds for an arrest can be based on hearsay evidence: *Eccles v. Bourque*, [1975] 2 S.C.R. 739. If there are no reasonable grounds to arrest an individual then the arrest is unlawful and the search incidental to the arrest is unreasonable.

> **78** A search incidental to a lawful arrest may extend to a search of a detainee's vehicle within his immediate surroundings (see *R. v.Caslake*, [1998] 1 S.C.R. 51), or of a vehicle from which a detainee has emerged at or shortly before his arrest (see *R. v. Klimchuk* (1991), 67 C.C.C. (3d) 385 (B.C.C.A.)).

[42] There is little distinction between police relying on direct evidence versus circumstantial evidence in determining whether they have reasonable grounds to arrest an individual. While speaking in the context of in court testimony, Lederman, Bryant and Fuerst state in *The Law of Evidence in Canada*, 4th ed. (Markham, Ont: LexisNexis, 2014) at para. 2.79:

> A fact in issue cannot always be proved by direct evidence. A witness cannot always be called to prove the facts from personal observation, nor can a document always be introduced which directly establishes the fact. The facts in issue must, in many cases, be established by proof of other facts. As many courts have noted, criminals are not likely to commit their crimes within the sight of witnesses and it would be a great blow to the administration of the criminal justice system if such evidence was not admitted. If sufficient other facts are proved, the court may "from the circumstances" infer that the fact in issue exists or does not exist.
>
> Circumstantial evidence in the criminal context is any circumstance which may or may not tend to implicate the accused in the commission of the offence for which the accused is charged.

Parties

[43] Section 21 of the *Criminal Code* states:

> **21.** (1) Every one is a party to an offence who
>
> (*a*) actually commits it;
>
> (*b*) does or omits to do anything for the purpose of aiding any person to commit it; or
>
> (*c*) abets any person in committing it.

> (2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence

[44] In *R. v. Dunlop and Sylvester*, [1979] 2 S.C.R. 881, Dickson J. (as he then was) stated for the majority at p. 891:

> Mere presence at the scene of a crime is not sufficient to ground culpability. Something more is needed: encouragement of the principal offender; an act which facilitates the commission of the offence, such as keeping watch on enticing the victim away, or an act which tends to prevent or hinder interference with accomplishment of the criminal act, such as preventing the intended victim from escaping or being ready to assist the prime culprit. …

[45] A general overview of party liability in drug trafficking cases appears in the textbook *Drug Offences in Canada,* 4th ed. (Canada Law Book, 2015) by Bruce A. MacFarlane et al., where the authors state:

> Where "D" sells drugs directly to an undercover officer, issues concerning party liability do not arise. Other defences may be available, such as entrapment, abuse of process or the misidentification of the vendor. But party issues — i.e., the degree of participation in the transaction — simply do not arise as a fact in issue.
>
> The picture changes when a third party ("TP") is involved in the transaction. The scenarios are endless. TP may have introduced the officer to D, then left. TP may have introduced the officer to D, but remained throughout the transaction. TP may have been assisting the purchaser in making the deal. Or s/he may have been primarily assisting D. Or TP may have been the furtive person in the corner of a dim and dusky bar, who — according to the officer — was supplying D with his drugs for sale. TP may be the alert but silent driver in a dial-a-dope operation. In each instance, the question is the same: was TP's involvement sufficient to trigger criminal liability?

The starting point in this analysis is, of course, the legislation. Remember that "traffic" is defined in s. 2 of the *CDSA* in the following manner:

> "traffic" means, in respect of a substance included in any of Schedules I to IV,
>
> (a) to sell, administer, give, transfer, transport, send or deliver the substance,
>
> (b) to sell an authorization to obtain the substance, or
>
> (c) to offer to do anything mentioned in paragraph (a) or (b), otherwise than under the authority of the regulations.

It is of some importance to note that the purchasing of a narcotic is not, by that section, made a criminal offence.

The foundational provision respecting parties to the offence is found in s. 21 of the *Criminal Code*. It provides as follows:

The overall purpose of s. 21 was described by Watt J.A. on behalf of the Ontario Court of Appeal in *R. v. Simon*, [2010 ONCA 754], … in the following way:

> Section 21 of the *Criminal Code* abolishes the common law distinction between principals and secondary parties and renders all who participate in a crime in any manner described in the section parties to the offence. Individual and joint or co-principals. Aiders. Abettors. Participants in a common unlawful purpose or design...

[46] The authors go on to say:

> When determining the parameters within which an individual can tread without attracting liability as a party, some assistance may be gained by considering the words of Hawkins J., in *R. v. Coney* (1882), 30 W.W.R. 678, 15 Cox C.C. 46, 51 L.J.M.C. 66, 8 Q.B.D. 534 (Eng. Q.B.), at pp. 557-558 [Q.B.D.]:
>
> > In my opinion, to constitute an aider and abettor some active steps must be taken by word, or action, with the intent to instigate the principal, or principals. Encouragement does not of necessity amount to aiding and abetting, it may be intentional or unintentional, a man may unwittingly encourage another in fact by his presence, by misinterpreted words, or gestures, or by his silence, [or] non-interference, or he may encourage intentionally by expressions, gestures, or actions intended to signify approval. In the latter case he aids and abets, in the former he does not. It is no criminal offence to stand by, a mere passive spectator of a crime, even of a murder. Non-interference to prevent a crime is not itself a crime. But the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition to it,

> though he might reasonably be expected to prevent and had the power so to do, or at least to express his dissent, might under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged and so aided and abetted.
>
> This passage has repeatedly been cited by the Supreme Court of Canada…

[47] The Crown says that there were ample grounds to conclude the three men in the truck were involved in a common enterprise to sell drugs. Based on Cpl. Nelson's background knowledge of the case, his knowledge of the truck's occupants, his personal observations that day and his experience as an investigator, the Crown submits it was reasonable for him to conclude that all occupants of the truck were involved together in a dial-a-dope operation whereby one man, Mr. Osborne, was driving, and the passenger seated in the middle, Mr. Taylor, was holding the drugs and handing them to Mr. Hardiman who was next to the passenger window and who in turn dealt with the customers by taking money from them and handing them the drugs.

[48] The authors of *Drug Offences in Canada* go on to consider party liability in various specific situations, such as where an accused middleman is "simply trying to assist the purchaser":

> In middleman situations, the first and immediate issue is whether the conduct of the accused middleman falls within any of the acts defined as trafficking in s. 2 of the *CDSA*. It is wrong to skip that issue, and move directly into a consideration of agency issues...

> At this first stage, agency issues are irrelevant. Put simply, party liability becomes a live issue only if the accused has not personally committed the offence... If the accused's conduct falls within the definition of trafficking (e.g., giving, delivering or transporting the drug), that ends the analysis. Providing the Crown has been able to prove all of the other essential ingredients of the offence, the accused is guilty of trafficking...
>
> If the accused's acts do not fall within the definition of trafficking, the court must move into a s. 21(1) *Criminal Code* analysis. That will determine whether the accused is guilty of trafficking or, if charged, some other offence. This is the point at which the entire course of dealings between the accused, the purchaser and the vendor become relevant — especially the nature of any assistance provided by the accused to the purchaser. If the accused aided the vendor (by, for instance, promoting the sale or exhibiting salesman-like behavior), s/he is guilty of trafficking even though the accused's main purpose was to help the purchaser. On the other hand, if the accused's conduct only assisted the purchaser, and nothing more, the accused must be found not guilty of trafficking. The test usually applied by appellate courts is whether ". . . the facts reveal no more than incidental assistance of the sale through rendering aid to the purchaser": *R. v. Greyeyes*, [[1997] 2 S.C.R. 825], at para. 8.

[49] There is no suggestion that Mr. Taylor was merely assisting the purchaser. He was seated in the front seat of a pickup truck between the driver and someone seated at the passenger window. He was shoulder to shoulder with Mr. Hardiman who conducted a hand to hand transaction with Ms. Matthews. While Mr. Taylor had no observable direct contact with the purchaser he did have some observable interaction with Mr. Hardiman during the transaction.

[50] Prior to making the decision to stop the pickup truck and arrest the occupants the police had the following personal and source information alleging that Mr. Taylor:

- had previously been in possession of cocaine packaged for trafficking;
- had a relationship with drug traffickers;
- was selling marijuana;
- was selling cocaine;
- had a gun;
- was having people drive him around to traffic controlled substances;
- was living at 19 Garrison Drive;
- had possession of marijuana for trafficking within the past week.

[51] In addition to source information and their own personal knowledge, the police observed the following on June 5, 2013:

- Jared Taylor sitting on the front bench seat of a pickup truck between the driver, Kyle Osborne, and the passenger, Travis Hardiman, at the window;
- The truck first parked briefly at the skate park in Eastern Passage with two pedestrians at the window;

- The truck later parked near a school and a skate park, again with pedestrians briefly at the window;

- The truck then drove to another school area;

- The truck then parked in the driveway of 422 Cow Bay Road where a drug transaction was observed with Ms. Matthews.

[52] On June 5, 2013, considering the constellation of information available to the police through sources, their previous dealings with the truck's occupants, their own observations of the truck's occupants that day as they went from place to place including in particular with Ms. Matthews, combined with their familiarity with dial-a-dope operations, the police certainly had a subjective belief that Mr. Taylor was committing an indictable offence. There were also sufficient objective grounds to support that belief. This was not merely a hunch on the part of Cst. Beehan and Cst. Nelson. The police had reasonable grounds to arrest the occupants of the white truck, including Jared Taylor. Since the arrest was proper, there was no s. 8 or s. 9 *Charter* violation in relation to this aspect of the investigation.

Statement of Amber Matthews

[53] The police went to 422 Cow Bay Road following the arrest of Jared Taylor but prior to the ITO being drafted. The police took a statement from Amber Matthews, the young, blond girl who they saw at the truck window. According to submissions on this *voir dire*, in her statement Ms. Matthews confirmed:

- She sent a text to a cell phone number looking to purchase marijuana;
- Some guys then came to her driveway with their vehicle window down;
- She paid the passenger with two $5 bills;
- She was given one gram of marijuana; and
- She turned over the plastic packaging the drugs were in to the police.

[54] Therefore, the police suspicion that the occupants of the white pick-up truck were involved in a dial-a-dope operation was confirmed after the roadside arrest but prior to obtaining the search warrant for 19 Garrison Drive.

Review of Search Warrants

[55] Mr. Taylor argues that the search warrant was deficient. Fish J. summarized the principles that should be applied when conducting a review of search warrants in *R. v. Morelli*, 2010 SCC 8:

> [39] Under the *Charter*, before a search can be conducted, the police must provide "reasonable and probable grounds, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of the search" (*Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, at p. 168). These distinct and cumulative requirements together form part of the "minimum standard, consistent with s. 8 of the *Charter*, for authorizing search and seizure" (p. 168).
>
> [40] 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, [2000] 2 S.C.R. 992, at para. 54 (emphasis in original)). 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.
>
> [41] The reviewing court does not undertake its review solely on the basis of the ITO as it was presented to the justice of the peace. Rather, "the reviewing court must exclude erroneous information" included in the original ITO (*Araujo*, at para. 58). Furthermore, the reviewing court may have reference to "amplification" evidence — that is, additional evidence presented at the *voir dire* to correct minor errors in the ITO — so long as this additional evidence corrects good faith errors of the police in preparing the ITO, rather than deliberate attempts to mislead the authorizing justice.

[56] The Supreme Court of Canada has provided very clear direction: a reviewing court must not quash a warrant simply because the reviewing court would not have issued the warrant. A reviewing court should only quash a warrant if there was no basis upon which the warrant could have been issued. Was there reliable evidence that might reasonably be believed on the basis of which the authorization could have issued? That is obviously a considerably less stringent test than proof beyond a reasonable doubt.

[57] A review of the sufficiency of the ITO, and the subsequent validity of the warrant, may allow for *viva voce* amplification evidence to be called. In this case the court heard from Cst. Beehan and Cpl. Nelson. In *R. v. Morris* (1998), 173 N.S.R. (2d) 1, [1998] N.S.J. No. 492 (C.A.), Cromwell J.A. (as he was then) stated:

> **88** The issue of amplification, at the level of principle, is concerned with the balance between the two requirements for a warrant: the reasonable grounds of belief requirement and the prior authorization requirement. As discussed earlier, the Supreme Court of Canada has held that the primary focus is on whether the reasonable grounds of belief requirement was met when the warrant issued. The Court's treatment of amplification is consistent with this. Allowing evidence after the fact showing that reasonable and probable cause existed at the time the warrant was obtained is an indication that the existence in fact of such grounds is an important consideration on review.
>
> **89** This is not to say that failure to provide complete and accurate information during the prior authorization process will be ignored; far from it. It is open to a court to invalidate the warrant where that process has been fundamentally subverted. In addition, the court is required to exclude from consideration material that was obtained in breach of the Charter. Also to be excluded is material that was deliberately and purposefully false or misleading in the sense that it was known to be false or materially misleading and was placed before the justice for the purpose of making the grounds appear more substantial than they were.
>
> **90** I conclude that in a s. 8 *voir dire* challenging a warrant issued pursuant to an Information to obtain which is valid and adequate on its face, evidence is admissible to explain non-deliberate errors or omissions on the review provided that the information was known to the police officers involved in obtaining the warrant at the time it was obtained and subject, of course, to the requirement that unconstitutionally obtained evidence cannot be considered. Although it is not, strictly speaking, necessary for me to do so for the purposes of this case, I am inclined to accept the Crown's position that deliberately false and misleading material placed before the authorizing justice is not subject to amplification.
>
> **91** It may be helpful to summarize the principles I have adopted to the review in a s. 8 *voir dire* at trial of a warrant supported by an Information to obtain which is valid on its face:
>
> 1. The trial judge is to determine whether the justice of the peace could have validly issued the warrant;

> 2. In conducting that review, the trial judge may hear and consider evidence relevant to the accuracy of and motivation for the material included in the Information to obtain a search warrant;
>
> 3. Fraudulent or deliberately misleading material in the Information does not automatically invalidate the warrant. However, it may have this effect if the reviewing judge concludes, having regard to the totality of the circumstances, that the police approach to the prior authorization process was so subversive of it that the warrant should be invalidated. In addition, fraudulent and deliberately misleading material should be excised from consideration;
>
> 4. In assessing the validity of the warrant, the trial judge, generally, is entitled to consider all evidence bearing on the existence in fact of reasonable and probable cause shown to be in the knowledge of the police at the time the warrant was sought. However, such evidence cannot be used if it was obtained by unconstitutional means or (I am inclined to think) to amplify fraudulent or intentionally misleading material in the Information to obtain.

[58] In *Morris*, Cromwell J.A. referred to the decision of *R. v. Bisson*, [1994] 3 S.C.R. 1097, where the unanimous court held at p. 1098:

> As stated in *R. v. Garofoli*, [1990] 2 S.C.R. 1421, errors in the information presented to the authorizing judge, whether advertent or even fraudulent, are only factors to be considered in deciding to set aside the authorization and do not by themselves lead to automatic vitiation of the wiretap authorization as was done by the trial judge. The trial judge should have examined the information in the affidavit which was independent of the evidence concerning Eric Lortie in order to determine whether, in light of his finding, there was sufficient reliable information to support an authorization. Proulx J.A., writing for the Quebec Court of Appeal, [1994] R.J.Q. 308, 87 C.C.C. (3d) 440, 60 Q.A.C. 173, carefully reviewed and analyzed the affidavit after excluding the paragraphs directly affected by the retraction. On the basis of this analysis, we are satisfied that there was sufficient independently verifiable information which was not affected by the trial judge's finding and upon which an authorization could reasonably be based.

Should the Search Warrant have been Issued?

[59] In *Hunter v. Southam*, [1984] 2 S.C.R. 145, the Supreme Court of Canada stated at p. 167:

> …The state's interest in detecting and preventing crime begins to prevail over the individual's interest in being left alone at the point where credibly-based probability replaces suspicion. …

[60] Prior to *Morelli, supra*, but consistent with the approach espoused by Fish J., the Nova Scotia Court of Appeal addressed the role of a reviewing court when dealing with an application to quash a search warrant in *R. v. Durling*, 2006 NSCA 124, where Oland J.A. stated at para. 19:

> [19] This reference to the issuing judge having a "credibly-based probability" has been the subject of much judicial discussion over the years. In **R. v. Morris**, [1998] N.S.J. No. 492 (C.A.), Cromwell, J.A. of this court provided the following guidance:
>
> > 30 Without attempting to be exhaustive, it might be helpful to summarize, briefly, the key elements of what must be shown to establish this "credibly based probability":
> >
> > (i) The Information to obtain the warrant must set out sworn evidence sufficient to establish reasonable grounds for believing that an offence has been committed, that the things to be searched for will afford evidence and that the things in question will be found at a specified place: (**R. v. Sanchez** (1994), 93 C.C.C. (3d) 357 (Ont. Ct. Gen. Div.) at 365).
> >
> > (ii) The Information to obtain as a whole must be considered and peace officers, who generally will prepare these documents without legal assistance, should not be held to the "specificity and legal precision expected of pleadings at the trial stage." (**Sanchez**, supra, at 364)
> >
> > (iii) The affiant's reasonable belief does not have to be based on personal knowledge, but the Information to obtain must, in the totality of circumstances, disclose a substantial basis for the

> existence of the affiant's belief: **R. v. Yorke** (1992), 115 N.S.R. (2d) 426 (C.A.); aff'd [1993] 3 S.C.R. 647.
>
> (iv) Where the affiant relies on information obtained from a police informer, the reliability of the information must be apparent and is to be assessed in light of the totality of the circumstances. The relevant principles were stated by Sopinka, J. in **R. v. Garofoli**, [1990] 2 S.C.R. 1421 at pp. 1456-1457:
>
> (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.
>
> (iii) The results of the search cannot, ex post facto, provide evidence of reliability of the information.
>
> 31 The fundamental point is that these specific propositions define the basic justification for the search: the existence of "credibly-based" probability that an offence has been committed and that there is evidence of it to be found in the place of search.

[61] In *Morris, supra,* Cromwell J.A. provided the following direction to reviewing courts when reviewing police conduct:

> [35] In reviewing police conduct during the prior authorization process, the court's attention cannot focus solely on the particular search under consideration. It is tempting to do so, especially where, as here, police suspicions proved to be well founded. However, the purpose of the prior authorization requirement must be kept in mind. As noted, that purpose 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 s. 8 case, the court must not only protect the rights of this individual, but also protect the prior authorization process which helps assure that the rights of all individuals are respected before, not after, the fact.
>
> [36] In summary, the requirement of reasonable grounds to believe sets the balance between individual privacy and effective law enforcement. The requirement of prior authorization prevents searches where it is not demonstrated to an independent judicial officer that such grounds exist.

[62] LeBel J. gave further direction for such a review in *R. v. Araujo*, 2000 SCC 65, at para. 46:

> [46] Looking at matters practically in order to learn from this case for the future, what kind of affidavit should the police submit in order to seek permission to use wiretapping? The legal obligation on anyone seeking an *ex parte* authorization is full and frank disclosure of material facts: ... So long as the affidavit meets the requisite legal norm, there is no need for it to be as lengthy as *À la recherche du temps perdu*, as lively as the *Kama Sutra*, or as detailed as an automotive repair manual. All that it must do is set out the facts fully and frankly for the authorizing judge in order that he or she can make an assessment of whether these rise to the standard required in the legal test for the authorization. Ideally, an affidavit should be not only full and frank but also clear and concise. It need not include every minute detail of the police investigation over a number of months and even of years.

[63] Similarly, a justice authorizing an ITO may draw reasonable inferences from the evidence provided. As Cromwell J. stated in *R. v. Vu*, 2013 SCC 60:

> [16] The question for the reviewing judge is "whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued, not whether in the opinion of the reviewing judge, the application should have been granted at all by the authorizing judge": *R. v. Araujo*, 2000 SCC 65, [2000] 2 S.C.R. 992, at para. 54 (emphasis deleted); *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at para. 40. In applying this test, the reviewing judge must take into account that authorizing justices may draw

reasonable inferences from the evidence in the ITO; the informant need not underline the obvious: ...

[17] The ITO set out facts sufficient to allow the authorizing justice to reasonably draw the inference that there were reasonable grounds to believe that documents evidencing ownership or occupation would be found in the residence: A.R., vol. II, at p. 112. In particular, the ITO referred to the premises to be searched as a "residence" and as a "two (2) story house" (p. 111). It also indicated that the appellant owned the property and that electricity was being consumed there (pp. 110-11). In my view, it is a reasonable inference that a residence would be the place to look for documents evidencing ownership or occupation. Where else would one expect to find such documents if not in the residence itself? Moreover, I think that the authorizing justice could reasonably infer that a place was being occupied as a residence from the fact that electricity was being consumed at that place and that it had an owner.

The Information to Obtain

Paragraph 19.7

[64] Paragraph 19.7 of the ITO states:

> Cst. Nelson observed the middle truck passenger, later identified as Taylor, hand something to the far right hand passenger of the truck and then he observed a hand-to-hand transaction take place between the far right passenger of the truck and the female at the window. The transaction took less than 1 second and the female ran into the house and the truck left immediately and drove east on Cow Bay Road…

[65] Mr. Taylor argues that paragraph 19.7 of the ITO should be excised as it is inaccurate and misleading. Following Cpl. Nelson's testimony at the amplification hearing, the Crown agrees that part of 19.7 is inaccurate. Neither Cst. Beehan nor Cpl. Nelson were examined in a manner that would suggest that any inaccuracies in paragraph 19.7 were deliberately falsified in an effort to make the grounds appear more substantial than they were in reality. While Mr. Taylor does not allege that the inaccuracy was deliberately and purposefully false or misleading, he does suggest that the paragraph is inaccurate and misleading such that the grounds may have appeared more substantial than they were in reality.

[66] During the amplification hearing, Cpl. Nelson confirmed several important details on cross examination regarding the critical transaction at the truck window:

Q. Yes. And the girl, upon seeing the truck there as I understand it, runs across the street?

A. Yes.

Q. And she's at the passenger window?

A. Yes.

Q. And, as I understand it, you, the right passenger looks at the centre passenger?

A. Yes.

Q. You think he moves his arm in, but you're not sure?

A. No, he moved his arm in.

Q. He moved his arm in. Was that because he had his arm out like that?

A. I can't remember.

Q. You can't remember. But you were observing the arm?

A. Yes, when, when he turned, he turned his body towards the middle passenger.

Q. Yes?

A. His right hand and right arm moved into the middle of the truck as well.

Q. Ok. But that's all you can say you saw.

A. That's correct. I saw through the back window, I could see the middle passenger towards turn, turn toward him, but that's all I saw.

Q. Ok. So you're not sure if there was any contact other than turning towards each other, the middle passenger and the right passenger. Correct?

A. That's correct.

[67] Therefore, the statement in paragraph 19.7 that "Cst. Nelson observed the middle truck passenger, later identified as Taylor, hand something to the far right hand passenger of the truck and then he observed a hand-to-hand transaction take place between the far right passenger of the truck and the female at the window" was not accurate. Corporal Nelson testified on direct that he "thought that the middle passenger passed something to the far right passenger". He did not actually

see Mr. Taylor hand anything to the far right hand passenger of the truck. While clearly inaccurate, there is no proof that the exaggerated wording in the ITO was included intentionally. Corporal Nelson jumped to a conclusion.

[68] The parties agree that 19.7 should be edited to remove the offending aspects. The Crown also suggests that Cpl. Nelson's testimony on amplification on this topic can be used to determine the reasonableness of issuing the search warrant. I agree with this approach and will edit 19.7 to excise the offending portion. I will also consider Cpl. Nelson's amplification testimony as to what he actually saw during the interaction between Ms. Matthews and the truck's occupants in order to determine sufficiency.

[69] Corporal Nelson testified that immediately after Mr. Hardiman brought his right arm into the truck and turned to face Mr. Taylor, his right arm and right hand moved into the middle of the truck as well. Constable Nelson then saw Mr. Hardiman participate in a hand-to-hand transaction with Amber Matthews. The constellation of circumstances, the previous information provided by Cst. Beehan, the movements of Mr. Taylor and Mr. Hardiman in relation to each other, the timing of the events, the transaction between Ms. Matthews and Mr. Hardiman and the fact that both Ms. Matthews and the truck immediately left the scene once the

hand to hand transaction was complete all led Cpl. Nelson to one particular conclusion.

Paragraph 19.11

[70] Paragraph 19.11 of the ITO states:

> Cst. Nelson searched Taylor incidental to arrest and seized another sandwich bag in his underwear which contained a large amount of new plastic packaging (dime bags) and 1 tinfoil ball that contained 4.1 grams of marihuana and a plastic bag of 0.5 grams of marihuana;

[71] Mr. Taylor says paragraph 19.11 of the ITO should be excised due to the unconstitutional nature of the roadside arrest and subsequent search.

[72] I do not agree that the roadside arrest was improper. As a result I do not agree that the search incident to the arrest which produced the evidence referred to in paragraph 19.11 was unconstitutionally obtained. I do not agree that paragraph 19.11 should be excised from the ITO.

Exigent Circumstances

[73] The Crown concedes that the walk through of 19 Garrison Drive was a warrantless search. However, the Crown says that the search was reasonable and was authorized by law due to exigent circumstances.

[74] According to the amplification evidence, the vehicle takedown occurred within sight of 19 Garrison Drive. Additionally, the police testified that they were aware that Jared Taylor's father was in the line of traffic created by the vehicle take-down. Because the police were within sight of 19 Garrison Drive, in combination with the fact that Jared Taylor's father could see the traffic stop and subsequent arrests, they wanted to secure 19 Garrison Drive to prevent the possible destruction of evidence while awaiting the search warrant. They argue that the arrest of the truck's occupants was public and notorious.

[75] Additionally, the police had source information that Jared Taylor owned a gun. No gun was found on Mr. Taylor when he was arrested or found in the vehicle. The police were concerned that someone at 19 Garrison Drive might have access to that gun. If officers were assigned to secure the perimeter of the residence prior to the search warrant being obtained, Cst. Beehan was concerned they were at risk of being shot, since there was source information about a gun.

[76] Constable Beehan says that he went to 19 Garrison Drive to secure and clear the residence, both to preserve evidence and for the safety of the officers who would be tasked with securing the location prior to and during the search once a warrant was obtained. He testified that he wanted to conduct a walkthrough of the

premises to clear it of people while awaiting the provision of a search warrant, not to search for evidence.

[77] Section 11 of the *CDSA* provides, in part:

> Information for search warrant
>
> 11. (1) A justice who, on *ex parte* application, is satisfied by information on oath that there are reasonable grounds to believe that
>
> > (a) a controlled substance or precursor in respect of which this Act has been contravened,
> >
> > (b) any thing in which a controlled substance or precursor referred to in paragraph (a) is contained or concealed,
> >
> > (c) offence-related property, or
> >
> > (d) any thing that will afford evidence in respect of an offence under this Act or an offence, in whole or in part in relation to a contravention of this Act, under section 354 or 462.31 of the *Criminal Code*
>
> is in a place may, at any time, issue a warrant authorizing a peace officer, at any time, to search the place for any such controlled substance, precursor, property or thing and to seize it.
>
> …
>
> *Search of person and seizure*
>
> (5) Where a peace officer who executes a warrant issued under subsection (1) has reasonable grounds to believe that any person found in the place set out in the warrant has on their person any controlled substance, precursor, property or thing set out in the warrant, the peace officer may search the person for the controlled substance, precursor, property or thing and seize it.
>
> *Seizure of things not specified*
>
> (6) A peace officer who executes a warrant issued under subsection (1) may seize, in addition to the things mentioned in the warrant,
>
> > (a) any controlled substance or precursor in respect of which the peace officer believes on reasonable grounds that this Act has been contravened;
> >
> > (b) any thing that the peace officer believes on reasonable grounds to contain or conceal a controlled substance or precursor referred to in paragraph (a);

> (c) any thing that the peace officer believes on reasonable grounds is offence-related property; or
>
> (d) any thing that the peace officer believes on reasonable grounds will afford evidence in respect of an offence under this Act.
>
> *Where warrant not necessary*
>
> (7) A peace officer may exercise any of the powers described in subsection (1), (5) or (6) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain one.
>
> *Seizure of additional things*
>
> (8) A peace officer who executes a warrant issued under subsection (1) or exercises powers under subsection (5) or (7) may seize, in addition to the things mentioned in the warrant and in subsection (6), any thing that the peace officer believes on reasonable grounds has been obtained by or used in the commission of an offence or that will afford evidence in respect of an offence.

[78] *R. v. Silveira*, [1995] 2 SCR 297 was decided prior to the enactment of s.11(7) of the *CDSA*, under previous legislation. The facts in *Silveira* were summarized by Cory J.:

> Factual Background
>
> [127] On August 28, 1990, the members of a drug squad of the Metropolitan Toronto Police commenced an investigation into the sale of cocaine. On that same date, an officer, working undercover, purchased a gram of cocaine from Antonio Scinocco for $600. On September 10, 14 and 18, an undercover officer made further purchases of cocaine from Scinocco at a community centre in Trinity Park, Toronto. On each occasion, the amount purchased was an ounce and the sum paid in advance was $2,000. On each of these occasions, the police officers observed the following pattern of events. Scinocco would meet with the appellant, Antonio Silveira. Silveira would then be driven by another co-accused to his residence at 486 Dufferin Street. The appellant would then go inside and leave after a short time to meet, once again, with Scinocco. Scinocco would then return to the undercover officer and give him the approximately 1 ounce or 25 grams of cocaine in rock form. At about 7:10 p.m. on the 18th, shortly after the third sale was made, the appellant was arrested, as were two co-accused. All the arrests took place in the vicinity of the community centre which was close to the appellant's residence.

[128] The police were concerned that the public nature of those arrests would lead to instructions being given to the residents of 486 Dufferin Street to destroy or remove any evidence that might be on the premises. The police believed that they had sufficient evidence from the purchases of cocaine and the observations of Silveira made on the 10th and 14th to obtain a search warrant for 486 Dufferin Street. Yet, they did not want to be accused of failing to present up-to-date information to the Justice of the Peace. It was therefore determined that further information relating to the purchase of cocaine made on the 18th would be added to the affidavit to be presented on the application for the search warrant. The police were satisfied that they had such an abundance of evidence establishing the reasonable and probable grounds for searching the premises that they would have no difficulty obtaining a search warrant. To prevent the destruction or the removal of the evidence between the time of the arrest and the arrival of the search warrant, officers attended at 486 Dufferin Street. They knocked on the door, identified themselves, and entered the premises without an invitation. Upon entering, they checked the premises for weapons and for the location of residents within the house. They then holstered their weapons and advised the occupants of the house to continue preparing dinner and watching the Blue Jays baseball game on television. They did not search the premises, but waited for the search warrant which they believed would arrive shortly.

[129] The officers who secured the premises were convinced that 486 Dufferin Street was the supply base for the cocaine that was sold to the undercover officer. One of the officers had, on two previous dates, observed the appellant and others return to the address prior to the sales being made. Further, they were concerned that, in light of the public nature of the arrests made in three locations close to 486 Dufferin Street, word would get back to the residents with the result that the evidence would be destroyed or removed. This, in the opinion of the officers, was not uncommon in the case of hard drugs. It is not without significance that a brother of the accused arrived at the premises while the police were waiting for the search warrant. Although there had been no apparent phone call to him, he was aware of the arrest of his brother before he arrived at the house.

[130] It was only when the search warrant arrived, a little over one hour later, that the actual search of the premises was undertaken. In the course of the search, the police found a locked duffle bag in the appellant's bedroom on the second floor of the house. When the officers opened it, they found some 285.56 grams (10 ounces) of cocaine and $9,535 in cash. The cash included substantial amounts of the marked money used by the undercover police to buy cocaine on earlier occasions.

. . .

[79] Similar to the walkthrough at 19 Garrison Drive, in *Silveira* the police were concerned about the destruction of evidence. The police in *Silveira* knocked, identified themselves and entered the home in question without invitation. Aside from checking for weapons the police allowed the occupants to continue to make dinner and watch TV while awaiting the provision of a search warrant. No actual search of the premises for evidence was undertaken until the search warrant was issued and arrived.

[80] In determining that the police entry into the home constituted an unreasonable search in *Silveira*, Cory J. stated on behalf of the majority of the Supreme Court of Canada:

> Did the Entry by the Police Constitute a Search?
>
> [140] In my view, the respondent very properly conceded that the entry by the police, undertaken in order to secure the premises and prevent the destruction of evidence, was indeed a form of search not authorized by law. There is no place on earth where persons can have a greater expectation of privacy than within their "dwelling-house". No matter how good the intentions of the police may have been, their entry into the dwelling-house without a warrant infringed the appellant's rights guaranteed by s. 8 of the *Charter*. Moreover, there can be no artificial division between the entry into the home by the police and the subsequent search of the premises made pursuant to the warrant. The two actions are so intertwined in time and in their nature that it would be unreasonable to draw an artificial line between them in order to claim that, although the initial entry was improper, the subsequent search was valid. It follows, then, that the question to be resolved is whether or not the admission of the cocaine and the money discovered during the search could bring the administration of justice into disrepute.

> Section 24(2) of the *Charter*
>
> [141] This case comes down to a consideration of the balance that must be struck between the right to privacy within the home and the necessity of the police to act in exigent circumstances. On the one hand, the police, in direct contravention of s. 10 of the *Narcotic Control Act*, entered into a dwelling-house without a search warrant or authorization. The *Narcotic Control Act* itself recognizes the age-old principle of the inviolability of the dwelling-house. It must be the final refuge and safe haven for all Canadians. It is there that the expectation of privacy is at its highest and where there should be freedom from external forces, particularly the actions of agents of the state, unless those actions are duly authorized. This principle is fundamental to a democratic society as Canadians understand that term. Thus, it can be argued that the unauthorized entry into a dwelling-house is so grave a breach of a *Charter* right that evidence secured as a result of such an unauthorized entry should always be excluded.
>
> [142] Yet, on the other hand, the police were investigating a very serious crime, specifically the sale of a hard drug. It is a crime that has devastating individual and social consequences. It is, as well, often and tragically coupled with the use of firearms. This crime is a blight on society and every effort must be undertaken to eradicate it. It is so serious and the destruction or removal of evidence is so easy that it can be argued that the police, while awaiting a search warrant, should always have the right to enter a dwelling-house without authority to preserve the evidence. Perhaps the solution lies somewhere between these extreme positions. Before considering the proper balance to be achieved, it is necessary to deal with a preliminary issue, namely, does the decision in *R. v. Kokesch*, [1990] 3 S.C.R. 3, determine the outcome of this case?

[81] After *Silveira*, Parliament replaced s 10 of the *Narcotic Control Act*, R.S.C. 1985, c. N-1 – which permitted a warrantless entry and search of a dwelling house when a peace officer believed "on reasonable grounds there is a narcotic by means of or in respect of which an offence under this Act has been committed" – with s. 11(7) of the *CDSA*, which permits a warrantless search "if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain one."

[82] The British Columbia Court of Appeal addressed the legislative changes in *R. v. McCormack*, 2000 BCCA 57, [2000] B.C.J. No. 143. The B.C. court followed *Silveira* in holding that the initial entry and the subsequent warrant-based search are a single transaction. Absent justification under s. 11(7) of the *CDSA*, there will be a violation of s. 8 of the *Charter*. A search is reasonable for purposes of s. 8 "if it is authorized by law, if the law itself is reasonable and if the manner in which the search was carried out is reasonable" (para. 14, citing *R. v. Collins*, [1987] 1 S.C.R. 265, [1987] S.C.J. No. 15, at para. 23). Saunders J.A. stated in *McCormack*:

> 15 In s. 11 of the *Controlled Drug and Substances Act* the Parliament of Canada has enacted legislation which gives lawful authority for a warrantless entry. A search properly conducted under that section is a search authorized by law. As no challenge is made either to the breadth of the legislation or the reasonableness of the manner of the search, the s. 8 question in this case is whether this warrantless search fits within the authorizing legislation.
>
> 16 Unlike *R. v. Silveira* which was decided before the enactment of s. 11 above and in which the consideration of exigent circumstances was part of the s. 24 *Charter* analysis, the new s. 11 brings the issue of the existence of exigent circumstances within the rubric of the s. 8 *Charter* question: does the search fit within the authorizing legislation?...

[83] Being satisfied that the requisite basis for a search warrant existed, the court in *McCormack* considered whether there were exigent circumstances justifying a warrantless search. This required a consideration of what constitutes exigent

circumstances. The court cited Sopinka J.'s comments on exigent circumstances in *R. v. Grant*, [1993] 3 S.C.R. 223, [1993] S.C.J. No. 98, where, dealing with a search under the *Narcotics Control Act*, he said, at para. 32:

> … Exigent circumstances will generally be held to exist if there is an imminent danger of the loss, removal, destruction or disappearance of the evidence if the search or seizure is delayed. While the fact that the evidence sought is believed to be present on a motor vehicle, water vessel, aircraft or other fast moving vehicle will often create exigent circumstances, no blanket exception exists for such conveyances. [Emphasis added.]

[84] In *R. v. Feeney*, [1997] 2 S.C.R. 13, [1997] S.C.J. No. 49, to similar effect, Sopinka J. said, at para. 52:

> … According to James A. Fontana (*The Law of Search and Seizure in Canada* (3rd ed. 1992), at pp. 786-89), exigent circumstances arise usually where immediate action is required for the safety of the police or to secure and protect evidence of a crime. With respect to safety concerns, in my view, it was not apparent that the safety of the police or the community was in such jeopardy that there were exigent circumstances in the present case. The situation was the same as in any case after a serious crime has been committed and the perpetrator has not been apprehended. In any event, even if they existed, safety concerns could not justify the warrantless entry into the trailer in the present case. A simple watch of the trailer in which the police were told the appellant was sleeping, not a warrantless entry, would have sufficiently addressed any safety concerns involving the appellant. With respect to concern about the potential destruction of evidence, at the time the police entered the trailer, they had no knowledge of evidence that might be destroyed; at best, they had a suspicion that the appellant was involved in the murder. Simply because the hunch may have turned out to be justified does not legitimize the actions of the police at the time they entered the trailer. As I stated in *R. v. Kokesch*, [1990] 3 S.C.R. 3, at p. 29, "[i]t should not be forgotten that *ex post facto* justification of searches by their results is precisely what the Hunter standards were designed to prevent". [Emphasis added.]

[85] Saunders J.A. added, in *McCormack*, that "[t]he existence of exigent circumstances involves the subjective belief of the police, and the objective basis for the belief" (para. 25). She concluded:

> 25 … Factors which favour a conclusion that there were exigent circumstances include:
>
> a) an hour before the appellant's arrest the police intercepted a telephone call from the appellant's girlfriend in which she said she would meet him at his apartment in one hour;
>
> b) the police had learned from earlier wiretap interceptions between the appellant and his girlfriend that she was supportive of the appellant's involvement in the drug trade;
>
> c) the police had learned from earlier wiretap interceptions that the girlfriend had looked after the appellant's apartment while he was on a trip to Mexico and therefore was likely to have a key to his apartment;
>
> d) as the police were arresting the appellant, a woman fitting the girlfriend's description drove by and made eye contact with the appellant;
>
> e) at the time of the arrest the police were wearing police vests and thus were easily identifiable as police constables;
>
> f) the woman believed to be the girlfriend was seen leaving the parking lot heading in the direction of the appellant's apartment building;
>
> g) also present in the parking lot was another vehicle which was similar to a vehicle the police had seen an associate of the appellant drive the evening before.

> 26 In his decision the trial judge found the police were credible and he commented favourably on the evidence of the officer who directed the police to make the warrantless entry. Although this finding is challenged by the appellant, I conclude that there was evidence before the trial judge on which to find that the police had the requisite belief that someone may have been going to the appellant's apartment with the intention of destroying evidence. In my view that finding of fact cannot be assailed on the record.
>
> 27 Further, I conclude that there was evidence to support the trial judge's objective conclusion that exigent circumstances existed within the meaning of s. 11(7), that is, "which made it impracticable to obtain a search warrant". This included evidence that the situation with the female was not expected when the police plan to arrest the appellant was made or the arrest was effected, that the police saw the female make eye contact with the appellant, that they had a reasonable basis on which to think that she was his girlfriend who had access to his apartment and that the woman was seen heading in the direction of the appellant's residence at a time when the surveillance team had been removed to protect the investigation should there be no arrest that day. There existed the necessary basis to obtain a search warrant, that is, it was reasonable for the police to expect evidence would be present in the apartment that could be destroyed. Unlike *R. v. Feeney*, the police had more than suspicion that the appellant was involved in the criminal activity for which he was arrested.

[86] The court concluded that there was "strong and persuasive authority on which the trial judge could properly find there were exigent circumstances which justified the entry without warrant" (para. 28). The requirements of s. 11(7) of the *CDSA* were met and there was no breach of s. 8 of the *Charter*.

[87] In *Crocker*, *supra.*, the British Columbia Court of Appeal set out the following facts:

> **44** Following Mr. Crocker's arrest, there was an exchange between him and Cst. Johnson. As a result of that exchange, Cst. Johnson understood that Mr. Crocker's daughter was inside the penthouse. Concerned that she might destroy

any potential evidence before the police could obtain a search warrant, Cst. Johnson took the penthouse keys from Mr. Crocker and at about 12:30 p.m., along with several fellow officers, entered the penthouse. They did not knock before entering but shouted "Police" several times.

45 Inside the penthouse, Cst. Johnson saw a female whom he recognized as the passenger who had been with Mr. Crocker on February 6, 2007. He directed Cst. Smith to arrest her for escaping lawful custody. The female was never charged with any offence related to the February 6, 2007 incident.

46 With another officer, Cst. Johnson went through the penthouse to ensure no one else was present. His purpose, he stated, was to secure the penthouse until he was able to obtain a search warrant. While there, he did not search any of the cupboards, drawers or closets, but used the front door key to unlock a padlocked door on the upper floor. Inside the padlocked room he saw what he believed to be a clandestine methamphetamine lab. Believing that it might constitute a safety hazard, he ordered everyone out, contacted the Hazardous Materials ("Hazmat") police team and then left the penthouse. The Hazmat team arrived shortly thereafter, examined the room and reported that it was not a methamphetamine lab but an abandoned marihuana grow operation. None of the Hazmat team opened any cupboards, drawers or closets during their examination.

47 The trial judge concluded there were no "exigent circumstances" that might have supported a warrantless entry into the penthouse by the police. He found that after his arrest, Mr. Crocker had no opportunity to communicate with anyone, including his daughter inside the penthouse, for the purpose of warning them of the police investigation and/or to direct them to destroy relevant evidence (para. 47). He also found that Cst. Johnson could have obtained a telewarrant before there was any reasonable likelihood that Mr. Crocker's daughter would have had any reason to be alarmed about his whereabouts.

48 Cst. Johnson arranged for the penthouse to be sealed off and kept under surveillance while he went about preparing the information to obtain ("ITO") in support of a search warrant. This was his first ITO and took him some time to prepare. He did not return to the penthouse with the warrant until about 11:30 p.m.

49 The search of Mr. Crocker's residence took place between 11:30 p.m. on February 9, 2007, and 6:00 a.m. on February 10, 2007. Inside the penthouse, the officers located 5.5 kg of pre-packaged marihuana, $5,320 in counterfeit money, a shredder, computers and other equipment used in the making of counterfeit money, forged cheques and identification, bags of stolen mail from other residents in the apartment building, an unlicensed rifle with a scope attached, and evidence that would support a charge of fraudulently personating the person whose stolen identification was found in Mr. Crocker's pocket upon arrest.

[88] In *Crocker*, D. Smith J.A. stated for the court:

> **57** It is trite law that an accused has the burden of establishing a *Charter* breach on a balance of probabilities: *Collins* at 277. In the May 5, 2008 hearing, the respondent alleged numerous breaches of s. 8 of the *Charter*. Section 8 provides:
>
> Everyone has the right to be secure against unreasonable search or seizure.
>
> **58** Warrantless searches are *prima facie* unreasonable: *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145. Once an accused has established a *prima facie* unreasonable search, the burden shifts to the Crown to establish, on a balance of probabilities, that a warrantless search is reasonable because it is (1) authorized by law, (2) the law itself is reasonable, and (3) the manner in which the search is carried out is reasonable: *Collins* at 278, and *R. v. Buhay*, 2003 SCC 30, [2003] 1 S.C.R. 631 at para. 32.
>
> **59** In this case, the s. 8 *Charter* challenges advanced by Mr. Crocker involved both warrantless searches and searches conducted under the authority of a search warrant.

[89] The Court's analysis in *Crocker* is quite helpful when considering the issues in the instant case. In *Crocker* D. Smith J.A. referred to the discussion of exigent circumstances in *Grant* and *Feeney*:

> **88** The Crown submits the trial judge erred in finding the initial warrantless police entry into Mr. Crocker's penthouse was unreasonable on the basis that the circumstances were not exigent. The burden was on the Crown to establish, on a balance of probabilities, that the warrantless entry into Mr. Crocker's residence, which was *prima facie* unreasonable, could be justified both subjectively and objectively based on exigent circumstances. In other words, Cst. Johnson had to subjectively believe that exigent circumstances existed and the evidence must have established an objective basis for that belief.
>
> **…**
>
> **93** Cst. Johnson knew Mr. Crocker's daughter was inside the penthouse from what Mr. Crocker had told him upon his arrest. There were no civilian witnesses to his arrest who could potentially have communicated that fact to his daughter. Cst. Johnson had also arranged for the penthouse to be secured and monitored until he returned with the search warrant. There was no suggestion this could not have been accomplished without a warrantless search. In the event Mr. Crocker's

> daughter left the residence after it had been secured, she could have forthwith been arrested on the charge of escaping lawful custody.
>
> **94** I am unable to see how Cst. Johnson had anything more than a general concern that any potential evidence inside the penthouse might have been destroyed by Mr. Crocker's daughter (or any other unknown occupants), if she or any other individuals became aware, by some unknown means, that Mr. Crocker had been arrested. Such a vague and speculative basis for a warrantless entry by the police into a private residence cannot be lawful. While Cst. Johnson may have subjectively believed in the potential loss of evidence from the penthouse there was no objective basis for that belief. The officer's concerns could not be said to have risen to the level of "imminent danger of the loss, removal, destruction or disappearance of the evidence if the search or seizure is delayed" or to a situation where "immediate action is required ... to secure and protect evidence of a crime".

[90] In *Crocker*, the Crown relied on *McCormack*, which had similar facts, but the court held that *McCormack* was distinguishable:

> **96** In *McCormack*, the accused was arrested in the underground parking garage of the apartment building where he resided. While he was being given his *Charter* rights, a vehicle drove past in which the female driver was observed to make eye contact with the accused. This behaviour led the police to believe that she knew the accused. Concerned that in the time it would take time to obtain a search warrant, the female might take steps to destroy any evidence inside the accused's apartment, the police decided to search the apartment without a warrant. Once they were satisfied no one occupied the apartment, they immediately left. The subsequent search of the accused's apartment pursuant to a validly issued search warrant produced inculpatory evidence against the accused which was admitted at trial. At para. 22 of*McCormack*, the Court referred to the exigent circumstance that was determinative of the trial judge's finding:
>
> > Here the trial judge found there were exigent circumstances. He could only have meant there were exigent circumstances because of the potential destruction of evidence by the woman who made eye contact with the appellant in the parking lot.
>
> **97** In this case, there was no such determinative finding of fact. To the contrary, the trial judge found as a fact that there was no opportunity for Mr. Crocker to communicate with his daughter inside the residence, or with anyone else, after his arrest. That finding was supported by the evidence. In my view, the trial judge did not err in finding that the warrantless search of the penthouse was unlawful and therefore unreasonable.

[91] The court in *McCormack* went on to consider the effect of the s. 8 breach on the evidence subsequently obtained by way of a valid search warrant:

> **100** In *R. v. Silveira*, [1995] 2 S.C.R. 297, the Court held that a sufficient temporal link between an unlawful search and the seizure of evidence pursuant to a valid search warrant will cause the manner of the search to be unreasonable and require an inquiry into the admissibility of the evidence obtained from the lawful search, pursuant to s. 24(2) of the *Charter*. On that issue, Sopinka J. observed:
>
> > [57] In *Grant, Kokesch* and *R. v. Wiley*, [1993] 3 S.C.R. 263, the Court found that there was a sufficient temporal link between warrantless perimeter searches made in breach of s. 8 of the *Charter* and the subsequent discovery of the evidence pursuant to a valid search to warrant examination under s. 24(2). Even where a perimeter search was not essential to the search conducted pursuant to the warrant, the Court held, the actions all form "component parts of an ongoing investigation and thus are not sufficiently remote from one another to diminish their temporal connection"; see *Wiley*, at p. 278.
> >
> > [58] Here, as in *Grant*, at p. 254, the s. 8 violation occurred during "the investigatory process ... quite apart from the fact that a reasonable search was undertaken subsequently pursuant to a valid warrant". There is no issue that there was not a sufficient temporal connection between the unwarranted entry and the finding of the evidence. The initial entry, the seizure of the house and its occupants, and the finding of the evidence can only be seen as part of one continuous transaction. This point is obvious: the police purposefully timed their warrantless entry into the house, together with the warranted search for drugs, as one continuous transaction so that there would be no removal or destruction of the evidence they suspected was in the appellant's house. I note that the Crown effectively conceded this point on appeal and I am in agreement with Cory J.'s holding, at p. 363, that
> >
> > > there can be no artificial division between the entry into the home by the police and the subsequent search of the premises made pursuant to the warrant. The two actions are so intertwined in time and in their nature that it would be unreasonable to draw an artificial line between them in order to claim that, although the initial entry was improper, the subsequent search was valid.
>
> **101** More recently, in *R. v. Tomlinson*, 2009 BCCA 196, Mr. Justice Frankel offered this reasoning:

> [75] Although Mr. Tomlinson's residence was searched pursuant to a valid warrant - the warrant being supportable without the information Sergeant Mendel provided to Detective Lo - s. 24(2) is nevertheless engaged because of the temporal connection between Sergeant Mendel's improper actions and the evidence sought to be excluded: *R. v. Grant*, [1993] 3 S.C.R. 223 at 254, 255; *R. v. Wiley*, [1993] 3 S.C.R. 263 at 278. In other words, even though the connection between the breach and the seizure of the evidence is tenuous, that evidence was "obtained in a manner" that infringed Mr. Tomlinson's rights as protected by s. 8 of the *Charter*.
>
> **102** Here, there was a temporal and tactical connection between the initial warrantless search of the penthouse and the evidence seized pursuant to the valid search warrants of February 9 and 13, 2007. Given this connection, I am of the view that the manner of the searches conducted pursuant to the search warrants infringed the respondent's s. 8 *Charter* right. Therefore, an inquiry into the admissibility of the evidence seized under the warrants must be undertaken in accordance with the modified framework for a s. 24(2) *Charter* analysis.

[92] The Crown argues that the exigent circumstances existed in this case such that s.11(7) of the *CDSA* was engaged and the police were statutorily authorized to enter 19 Garrison Drive without a warrant to conduct the walkthrough. The Crown agrees that the walkthrough constitutes a search but suggests because of the exigent circumstances and the statutory authority granted by s.11(7), the search was reasonable.

[93] Mr. Taylor argues that since the police knew about the possibility of a gun as far back as December 2012, they should not be able to claim exigent circumstances such that s.11(7) was engaged and a search warrant deemed unnecessary on June 5, 2013. In this regard the ITO states:

> 13. On December 6th, 2012 I spoke with Source "A" who told me that Jared Taylor sells marihuana, supplies others with marihuana and has a gun;
>
> …
>
> 16. On May 16th, 2013 I spoke with Cst Harding who told me that he spoke with Source "B" within the past week. Source "B" told him that Jared Taylor lives on Garrison Dr in Eastern Passage, Jared sells cocaine and marihuana and has a gun, and that Jared has people to drive him around;

[94] While it is true that the police had source information stating Mr. Taylor had a gun in December 2012, it was only on June 5, 2013, following their surveillance and observations of Mr. Taylor and the others, including the transaction with Ms. Matthews, that they effected an arrest. Once the arrest occurred the process was engaged. There is nothing untoward about the police choosing to arrest Mr. Taylor on June 5, 2013. When the drugs were found on Mr. Taylor, considering the constellation of other information available to the police, they then determined they would conduct a search of Mr. Taylor's home. Knowing that two separate and reliable sources had provided information about Mr. Taylor having a gun, when the police did not locate the gun on Mr. Taylor's person or in the truck during his arrest, they were concerned that someone else involved in the dial-a-dope operation and present at the stash house could have access to the firearm. Cst. Beehan did not want his fellow officers to be sitting ducks if they were stationed outside 19 Garrison Drive to secure the scene while awaiting the provision of a search warrant. This concern was enhanced by the fact that the

vehicle takedown was visible from 19 Garrison Drive and within sight of Mr. Taylor's father.

[95] Mr. Taylor also argues that the police created the exigent circumstances due to the location of the vehicle take down. He argues that the police did not have to stop the vehicle within sight of 19 Garrison Drive and by choosing to do so they created their own exigent circumstances.

[96] Constable Beehan and Cpl. Nelson both described how the choice of the takedown location occurred. After the transaction with Ms. Matthews, the truck immediately pulled onto Cow Bay Road. Corporal Nelson was stuck in traffic and could not immediately catch up. Knowing there was source information that Mr. Taylor had a gun, Cst. Beehan did not want to conduct the traffic stop alone. When the truck pulled off Cow Bay Road heading toward 19 Garrison Drive, Cst. Beehan had a dilemma, as he was concerned that the truck's occupants would head into 19 Garrison Drive and further complications would then arise. Therefore, Cst. Beehan conducted the traffic stop very quickly after the truck turned off Cow Bay Road onto Garrison Drive. Cpl. Nelson was then able to catch up almost immediately.

[97] I agree that the combination of the very visible traffic stop involving two police officers arresting three men on the roadside in a residential neighbourhood, resulting in a line of traffic that included one of the arrestee's fathers, all within sight of the suspected stash house and residence of that same arrestee, created a reasonable concern that any occupants of 19 Garrison Drive might be alerted to police involvement and might use the opportunity to destroy, or flee with, any evidence located within that home.

[98] The mere suspicion of a gun being in a particular location does not alleviate the need for a search warrant. Constable Beehan's concern about posting two of his colleagues outside of the home of a suspected drug trafficker that two reliable sources had indicated owned a gun was a legitimate concern. But that would not carry the day in this case as the residence could have been watched from a distance by the police while awaiting a search warrant.

[99] The critical issue regarding exigent circumstances and 19 Garrison Drive was the arrest being so publically visible, within sight of 19 Garrison Drive and within sight of Mr. Taylor's father. The conditions of exigency that engage s.11(7) of the *CDSA* were present in this case. There was a reasonable concern on the part of the police regarding the possibility of the immediate destruction or loss of

evidence. The conditions for obtaining a warrant were present but by reason of exigent circumstances it was temporarily impracticable to obtain one. A telewarrant could not have been obtained quickly enough in these circumstances. Of course, a search warrant was obtained shortly after the walkthrough, although some grounds for obtaining the warrant came about because of the walkthrough.

Consent

[100] Mr. Taylor argues that there was no valid consent on the part of Wayne Philpott to allow the police to conduct the walkthrough at 19 Garrison Drive. In *R. v. Wills* (1992), 7 O.R. (3d) 337 (Ont. C.A.), the Ontario Court of Appeal stated at pages 14-15:

> In my opinion, the application of the waiver doctrine to situations where it is said that a person has consented to what would otherwise be an unauthorized search or seizure requires that the Crown establish on the balance of probabilities that:
>
> (i) there was a consent, express or implied;
>
> (ii) the giver of the consent had the authority to give the consent in question;
>
> (iii) the consent was voluntary in the sense that that word is used in *Goldman, supra*, and was not the product of police oppression, coercion or other external conduct which negated the freedom to choose whether or not to allow the police to pursue the course of conduct requested;
>
> (iv) the giver of the consent was aware of the nature of the police conduct to which he or she was being asked to consent;
>
> (v) the giver of the consent was aware of his or her right to refuse to permit the police to engage in the conduct requested; and,
>
> (vi) the giver of the consent was aware of the potential consequences of giving the consent.

[101] Mr. Philpott's *Charter* rights are not the issue here. Mr. Taylor's are of concern. Exigent circumstances gave the police legislative authority to enter 19 Garrison Drive. Nonetheless, I think it is worthwhile to comment on the situation.

[102] When Cst. Beehan knocked on the door of 19 Garrison Drive and Wayne Philpott, Jared Taylor's mother's boyfriend, answered the door, Cst. Beehan told Mr. Philpott that Jared Taylor had been arrested and was in custody up the street for a drug trafficking investigation, that the police were in the process of obtaining a warrant to search the home and that he wanted to make sure there was no one else in the home.

[103] Mr. Philpott accompanied Cst. Beehan on a walkthrough of the residence as each room was checked to ensure there was no one else there. The cross-examination of Cst. Beehan on this issue consisted of the following:

> Q. And when you arrived at 19 Garrison, you met with Mr. Philpott, correct?
>
> A. Yes.
>
> Q. And as I understood your evidence on direct, you told him that you would be searching that residence. Correct?
>
> A. Yes.
>
> Q. So it's fair to say that Mr. Philpott would have felt that he had no choice but to let you in that residence, correct?
>
> A. Uh, well, I told him that I was going to obtain a search warrant for the house and that I want to make sure that there was nobody in the house that would destroy anything.

Q. Yeah. You confirmed there was nobody else in the house, correct?

A. Correct, yes.

Q. Those would be my questions. Thank you.

[104] Mr. Philpott was not called as a witness on this *voir dire*. The Crown argues that Mr. Philpott was an adult who lived in the home and allowed the police entry as the police described, for officer safety and to preserve evidence. Mr. Philpott not only allowed the police entry and escorted Cst. Beehan through the home, he also volunteered information about Jared Taylor that inferred criminal behaviour of some variety on Mr. Taylor's part. Part of Cst. Beehan's grounds for the warrant include Mr. Philpott volunteering that he did not talk to Jared because of Jared's "activities", and that Jared had a safe in his room.

[105] From the testimony of Cst. Beehan it appears that when Mr. Philpott let the police in to conduct the walkthrough he may have just been acquiescing to the inevitable. Again, Mr. Taylor's *Charter* rights are relevant to this analysis, Mr. Philpott's are not. Nonetheless, the Defence urges the court to consider the overall behaviour of the police during the search in determining reasonableness. In *R. v. Grant*, 2009 SCC 32, McLachlin C.J. stated at para. 25:

> **25** The first extreme was rejected by this Court in *R. v. Therens*, [1985] 1 S.C.R. 613, which held that detention for *Charter* purposes occurs when a state agent, by way of physical or psychological restraint, takes away an individual's choice simply to walk away. This encompasses not only explicit interference with

> the subject's liberty by way of physical interference or express command, but any form of "compulsory restraint". A person is detained where he or she "submits or acquiesces in the deprivation of liberty and reasonably believes that the choice to do otherwise does not exist" (*Therens*, at p. 644). It is clear that a person may reasonably believe he or she has no choice in circumstances where there has been no formal assertion of police control. Thus the first interpretation must be rejected. This comports with the principle that a generous rather than legalistic approach must be applied to the interpretation of *Charter* principles and avoids cramping the purpose of the protections conferred by ss. 9 and 10 of the *Charter*.

[106] In *R. v. Skinner*, 2005 NSSC 246, Tidman J. considered a situation where the police entered a home without a warrant and the Crown argued that there had been consent:

> [45] As found by the Supreme Court of Canada in *Hunter et al. v. Southam Inc.*, [(1984), 14 C.C.C. (3d) 97], judicial authorization to enter a home is a pre-condition for a valid search and seizure. Thus there is a presumption that a warrantless search is unreasonable, which in this case must be rebutted by the Crown.
>
> [46] Immediately before the police entry, the police were not in hot pursuit of Anderson which might justify a warrantless entry. At that time seven police officers were in attendance at the scene, if the police believed that Anderson may have been in the accused's home, nothing prevented them from obtaining a search warrant at that time since there were plenty of police officers who could have remained at the scene to ensure that Anderson if he was there did not leave the premises.
>
> [47] In the Court's view, it is evident that the police did not attempt to obtain a search warrant because they believed they had no reasonable and probable grounds to obtain a warrant at that time.
>
> [48] The Crown submits that a warrant was unnecessary since the accused consented to the search of his home for Anderson. The Court finds that the accused did not immediately consent to the police entry. It was only after Constable Fairburn said it would be "easier" if the accused consented to the search of his home for Anderson.
>
> [49] When Constable Fairburn told the accused it would be "easier" if he consented to the search, although the accused was not asked what that term meant

> to him, the logical interpretation of that term is that it would be easier for the accused and if he did not consent they would come in to the home regardless.
>
> [50] In the Court's view, the Crown has not established on a balance of probabilities that the accused's consent was voluntary. Even if the accused gave a valid consent to search for Anderson in the Court's view that consent ended when the object of the police's interest changed from Anderson to the accused. That occurred when Constable Fairburn found the first gun and ammunition. At that point it is noted by Constable Fong, the accused was arrestable and was in jeopardy. That view was apparently shared by Constable Fairburn, since at trial he said that upon finding the first gun and ammunition, he placed the accused under arrest, gave him a police caution and advised the accused of his right to counsel.

[107] The police did not advise Mr. Philpott that he had a choice whether or not to let them enter. In light of my findings regarding exigent circumstances and the applicability of s.11(7) of the *CDSA*, combined with the comments in *Crocker*¸ the issue of consent or lack thereof is irrelevant. Exigent circumstances, in combination with s.11(7) of the *CDSA*, gave the police statutory authority to enter the home whether or not Mr. Philpott gave valid consent.

[108] The only noteworthy personal observation made by Cst. Beehan during the walkthrough with Mr. Philpott was that on one bedroom door upstairs was a metal plaque with the name Jared. No detailed search of the home was conducted to look for drugs, a gun or any other evidence. The focus of the search was to ensure there was no one else in the home who could either destroy or remove evidence or use a gun to harm the police. Once the walkthrough was complete Cst. Beehan then

locked the back door and left the home through the front entrance. Two other police officers were then tasked with securing the exterior of the home.

[109] During the walkthrough, Mr. Philpott told Cst. Beehan that he did not have much interaction with Jared because of Jared's activities. When asked to clarify what he meant, Mr. Philpott indicated that he did not wish to offer much more information other than also telling Cst. Beehan that Jared Taylor had a safe in his room. Hearing that Jared Taylor had a safe in his room added to Cst. Beehan's suspicion that 19 Garrison Drive was being used as a stash house for a dial-a-dope operation.

Paragraph 24

[110] Paragraph 24 of the ITO states:

> I went to Jared Taylor's house at 19 Garrison Dr and located his mother's boyfriend Wayne Philpott inside the home. I explained that Jared was in custody for a drug related matter and that police would be obtaining a search warrant for the house. I walked through the home to ensure no other people were inside. Wayne pointed out Jared's bedroom to me which had a metal stamp on the door with the name of "Jared." I locked the back door of the home and walked out the front door of the residence with Wayne. Wayne told me that Jared has a safe in his room and that he doesn't talk to Jared because of Jared's activities. Wayne did not elaborate on what that meant. While at the home, I saw 2 vehicles parked in the yard and a shed in the backyard;

[111] Mr. Taylor suggests that para. 24 of the ITO be excised due to the unconstitutional nature of the walkthrough. The walkthrough was authorized by s.11(7) of the *CDSA*. As a result there was no violation of s. 8. of the *Charter*. Paragraph 24 will not be excised.

19 Garrison Drive

[112] Mr. Taylor argues there were no grounds to suggest drugs or a gun would be found at 19 Garrison Drive, the ITO was deficient in this regard, the search warrant should be quashed and the search was unreasonable. Mr. Taylor points out that there was no direct source information alleging drugs or a gun would be found at 19 Garrison Drive.

[113] The police had source information that Mr. Taylor was selling drugs through a dial-a-dope operation and that he had a gun. The police were told that Mr. Taylor had marijuana for sale within the week of June 5, 2013. The police had personal knowledge that Mr. Taylor previously had possession of cocaine in circumstances that appeared to be trafficking. The police observed Mr. Taylor and the two other men in the truck apparently involved in a dial-a-dope operation. The police then confirmed the dial-a-dope sale with Amber Matthews. The police were aware through previous experience that dial-a-dope dealers may leave part of their

stash in their home or another location. After the sale to Amber Matthews, the police saw the truck driving toward 19 Garrison Drive. The police stopped the truck and arrested the occupants. In the truck and on the occupants, including Mr. Taylor, the police found evidence of drug trafficking. The police were told by Wayne Philpott that Jared had a safe in his room. Mr. Philpott said he does not talk to Jared because of his "activities". The police were aware that Mr. Taylor lived at 19 Garrison Drive. While the occupants of the truck still had drugs on them when arrested, the police reasonably believed that the truck was headed toward 19 Garrison Drive to replenish their drug supply. At the very least, their inventory in the truck was depleted after the drug sale to Ms. Matthews. Therefore, the police had reasonable grounds to believe that drugs, scales, packaging and/or a safe would be found at 19 Garrison Drive.

Section 24(2)

[114] There were exigent circumstances engaging s. 11(7) of the *CDSA* such that a walkthrough search was authorized by law. The search warrant was valid. The search and seizure at 19 Garrison Drive was reasonable. There were no *Charter* violations. As such, no s.24(2) *Charter* analysis is required.

Conclusion

[115] The Defence motion to exclude the evidence is denied.

Arnold, J.