

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Skinner, 2005 NSSC 246

Date: 20050526

Docket: CR230752

Registry: Halifax

Between:

Her Majesty The Queen

v.

Steven Douglas Skinner

Judge:

The Honourable Justice Gordon Tidman

Heard:

April 28 & 29, May 4, 26, 2005, in Halifax, Nova Scotia

Written Decision:

August 12, 2005

Counsel:

Tim McLaughlin, for the Crown

Kelly Serbu and Josh Arnold, for the Defence

Tidman, J.:

[1] The accused brings this application for exclusion of evidence pursuant to s. 8, 9, 10(a) and 10(b) and 24(2) of the *Charter of Rights and Freedoms*.

[2] The facts briefly are these. On the evening of November 30, 2003, the Halifax Regional Police were looking for one Steven Anderson for whom an arrest warrant had been issued for a parole violation.

[3] After dark, Constables Joel Allen and Regan Fong, members of the P.O.P. Division, who were patrolling in an unmarked vehicle in civilian clothing spotted the accused's vehicle parked at Tim Horton's near the intersection of the Waverley and Montebello Roads.

[4] The Constables had been informed that Anderson and the accused were friends and that Anderson may be with Skinner. Both Constables said they saw the profiles of two persons in the front seat of Skinner's vehicle, but it was too dark to identify the persons and the vehicle's rear window was tinted.

[5] Constables Allen and Fong followed the vehicle, a Ford Explorer, with the intention of stopping it to determine if Anderson was an occupant. Because they did not have a marked police vehicle with all the emergency and notification lighting and were in plain clothes, for safety reasons, they radioed for assistance and also they wanted a marked police vehicle to stop the Ford Explorer.

[6] The Ford turned into Lake Charles Road off the Waverley Road and proceeded into the accused's driveway at 8 Lake Charles Road which is approximately 20 metres long and located down a steep incline.

[7] The constables proceeded past the driveway and could not see anyone exit the Ford vehicle. They waited at the end of the driveway for approximately 10 to 12 minutes until Constables MacVicar, Fairburn, MacDonald and St. Pierre and possibly a canine officer arrived at the scene. The police group briefly discussed what they would do and it was decided they would attempt to surround the house which is located in a wooded area and Constable Fairburn who knew the accused would go to the front door of the house with Constable Allen and ask to search the house for Anderson. They did so. The accused answered the door and Fairburn

told him that they were looking for Anderson and wished to search the house. Fairburn also told the accused it would be “easier” if he allowed them to do so.

[8] The accused said Anderson was not there and allowed them in to look for him. The house is relatively small being a one story home consisting of a kitchen, living room, dining room, bedroom and adjacent laundry room, bathroom and attic. Constable Fairburn entered the house first, followed by Allen.

[9] They went to the bedroom where Fairburn pulled the blanket off the top of the bed, covering a small mound on the bed and discovered a large quantity of money, something over six thousand dollars (\$6,000), lying loose on the bed along with a white bullet proof vest.

[10] Constable Fairburn then proceeded to the laundry room where he found either then or later an unloaded double barrelled shotgun standing in a corner of the laundry room and ammunition on the shelf of the laundry room.

[11] When the gun was found the police asked if there were any more guns in the house. Skinner said yes and proceeded to show them a loaded pump action shotgun, which was located under the bed. He was restrained from pulling out the gun which was retrieved by Constable Allen. Momentarily thereafter Constable Fairburn retrieved from under the bed a kit bag containing pills and a bag of marijuana. The bed was low to the floor and Constable Fairburn had to squish the kit bag to pull it out from under the bed.

[12] The accused was arrested and given the standard police caution and advised of his *Charter* right to counsel. He chose not to call counsel. The accused was subsequently charged with the offences he now faces. The police had no judicial warrant to search the accused’s home at the time.

[13] The issue before the Court is whether the police’s warrantless entry and search of the accused premises violated the accused’s rights under the *Charter*, and if so, should all or any of the evidence obtained by the police after the entry be ruled inadmissible at trial.

[14] Before dealing directly with that question, several important factual matters in issue must first be determined. They are:

- (1) What information did Constables Allen and Fong have that caused them to follow the accused's vehicle.
- (2) What occurred at the door of the accused's residence when it was answered by the accused? The accused admits that he consented to have his house searched for Anderson but says at the time he asked the officers to wait at the door until he attended to his dog, but the police came in immediately and began the search in his bedroom.
- (3) Did the accused at any time ask the police to leave the premises?
- (4) Was the first gun found plainly visible or hidden under clothing, as well as the ammunition?
- (5) Was the accused arrested and given the police caution and advised of his *Charter* rights immediately following the finding of the first gun or after the finding of the second gun and kit bag under the bed?
- (6) Was the house attic searched prior to or subsequent to the finding of the guns and kitbag and drugs?

[15] Dealing with the first factual issue, accused's counsel do not concede that the accused was not the police's original target on the night in question, but did not argue that issue strongly following the hearing.

[16] I am satisfied that Anderson and not the accused was the police's target when Constables Allen and Fong followed the accused vehicle to his house and also, when Constables Fairburn and Allen entered the accused's home.

[17] Constables Allen and Fong had earlier on the same day called on Anderson's mother's home in pursuit of Anderson. They were advised that Anderson may have been with the accused on the date in question. Although, Constable Allen said that he saw what he believed were two white males through the untinted front windshield of the accused's vehicle, it was dark at the time and he could not identify the persons in the vehicle. Both Constables Allen and Fong say they saw the silhouettes of two persons through the rear window of the accused's vehicle, one in the driver's and one in the passenger's seat.

[18] The accused says that only he and his dog were in the vehicle at the time. He indicated that the dog was sitting in the front passenger seat. The dog, according to the evidence weighed approximately 50 to 60 pounds and was part pit bull.

[19] Although it cannot be determined on the evidence who besides the accused was in the accused's vehicle when it was followed by the police, I am satisfied that the police suspected that Anderson may have been in the vehicle at the time.

[20] Dealing with the second issue, I am satisfied that the accused consented after Constable Fairburn's request to him to the search of this home for Anderson. I am also satisfied that the police did not enter the house immediately after they were told to wait until the accused secured his dog.

[21] I am also satisfied that the accused attempted to hide the weapons, drugs and money after he saw Constable Fairburn, who was known to him, through the window of the front door before he answered the door knock. I also find that Constable Fairburn when seeking entrance to search for Anderson, told the accused it would be "easier" if he let them in.

[22] Dealing with the third issue I am satisfied that the accused never asked the police to leave his house or indicated in any way they were to leave or cease their search for Anderson. All of the police officers deny that the accused indicated to them that they were to leave the residence or could no longer search the residence. In fact, that is the only material fact upon which all of the police officers agree.

[23] The fourth issue, dealing with the first gun, the accused says that before he allowed the police to enter his residence, he covered the first gun found with a jacket and the gun was unloaded. Constable Fairburn on direct examination says that he found the gun standing in the corner of the laundry room completely uncovered as shown in the photograph (Exhibit 20, Photograph # 21).

[24] At the Preliminary Inquiry, Constable Fairburn said the first gun found was covered with clothing when he found it. He explained on cross-examination that when he found the gun, it was not concealed and by covered with clothing, he meant clothes were on hangers above the gun, but they were not concealing the gun. The hanging clothing he says were as shown in Exhibit 20, Photo # 19. The

gun as shown in Photo # 21 is in the right hand corner of the closet opposite the hanging clothing.

[25] Constable Allen who prepared the crown sheet says Constable Fairburn told him the first gun was located under some clothing and that's what he put in the Crown sheet. Constable Fong says that Constable Fairburn said the first gun was found under something. On cross-examination Constable MacVicar says that he saw Constable Fairburn moving a pile of clothes when he found the shotgun.

[26] I find that Constable Fairburn found the first gun under clothing standing in a corner of the closet in the laundry room. I also find that he found ammunition on the closet shelf covered by a cloth material.

[27] The fifth factual issue, that is, when was the accused arrested and advised of his *Charter* rights. Constable Fairburn says that immediately after finding the first gun and ammunition on the closet shelf, the accused was placed under arrest and given the standard police caution and advised of his *Charter* rights under s. 10(b) of the *Charter* and was told that he could call a lawyer. He was given the phone number of duty counsel and says the accused responded that he did not wish to call a lawyer.

[28] The accused says that he was not arrested until after the second gun and kitbag and marijuana were found under the bed. On cross-examination Constable Fairburn agreed that at the Preliminary Inquiry he said he arrested Skinner after the second gun was found. He explained that it was chaotic at the time but his present recollection was that he arrested the accused after the first gun was found. He conceded that it was possible the arrest was made after the second gun was found. Constable Fairburn says when Constable Allen stepped on the gun under the bed - and Constable Allen said he put his foot in front of the accused to prevent him from retrieving the gun which was not visible to him at that moment - and I accept Constable Allen's evidence on this point. Constable Fairburn says, when Constable Allen stepped on the gun, he looked under the bed for Anderson and found the kitbag. At the Preliminary Inquiry he said he was looking for a person under the bed, he then said he was looking for more firearms under the bed and said there could have been a pistol in the kitbag.

[29] Constable Allen says the accused was arrested by Fairburn after the second gun was found at 23.08 hours. Constable Fong says that the accused was arrested

after the first gun was found but he was uncertain whether the accused was arrested after the first found gun or after the second found gun. He was not sure the place was secure from Anderson at the time the second gun was found.

[30] Constable MacVicar says the accused was arrested by Constable Fairburn at 23.05 hours after the second gun was found, but it could have been after the first gun was found. He first said that Constable Fairburn came out of the laundry room with the first shotgun and told the accused he was under arrest. On cross-examination, Constable MacVicar says the accused was detained after the first gun was found, but was not told he was under arrest and given a police caution and his *Charter* rights until after the second gun was found.

[31] I find that the accused was not arrested and given a police caution and *Charter* rights until after the second gun, kitbag and marihuana were found under the bed.

[32] Dealing with the sixth and final factual issue, in dispute - at least the factual issues. The accused says that Constable Fairburn searched the attic after he looked in the bedroom and laundry room but before Constable Fairburn found the first shotgun in the laundry room. He says he asked the police to leave by saying , okay you guys are done, after the home had been searched. The implication being that the police located the first gun and subsequent evidence after the expiration of the consent given, that is to enter the house to search for Anderson.

[33] Constable Fairburn says on direct examination that he searched the attic after the guns and other evidence were located. On cross-examination, Constable Fairburn agreed that his notes state that he “looked in the attic then laundry room”. He says that note is wrong and reiterated that he looked in the attic after finding the guns, kitbag and marihuana. He says that notwithstanding the error, it was not possible that he searched the attic first. Constable Allen says the attic was searched after the guns and kit bag were found. He says that Constable Fairburn looked further for Anderson after 23.40 hours and that Skinner was arrested at 23.08 hours.

[34] Constable Fong says on cross-examination that he is certain the attic was searched before the first weapon was found. Constable MacVicar says that Constables Fairburn and Allen searched the bedroom first, then Constable Fairburn

searched the attic and following that Constable Fairburn went into the bedroom and laundry room and found the first gun.

[35] The accused, Constables Fong and MacVicar, along with Constable Fairburn's notes indicated that the attic was searched before the first gun was found. Only Constable Fairburn's assertion that his notes were wrong on this point and Constable Allen's testimony indicate the attic search took place after the first gun was found. Constable MacVicar's sequence of search agrees with Constable Fairburn's notes taken shortly after the events.

[36] I find that the attic was searched before the first gun was found.

[37] Dealing now with the alleged violation of the *Charter*. Although the Crown during argument in this case did not strongly argue that the search warrant obtained following the discovery of the bulk of the evidence against the accused must be upheld unless this Court finds there was no evidence upon which the warrant could have properly been issued. Nonetheless it was argued in the Crown brief on the law and I will deal with it here.

[38] The Court has no difficulty in determining that the warrant was improperly issued simply because the information provided to the Justice of the Peace who issued the warrant was incorrect. Paragraph 7 and particularly 8 of the information to obtain a search warrant, that is Exhibit 32, contain the crux of the information leading to the issuance of the search warrant. Paragraph 9 indicated all the criminal evidence already found. Paragraph 8 states that Constable Fairburn, "walked through the kitchen area, directly into the master bedroom where he observed a long barrel shotgun standing in the corner of the bedroom".

[39] Constable Allen admitted that information was incorrect. In any event, in the Court's view the issue remains whether the police entry and subsequent search of the accused's home was lawful.

[40] In making that determination, several issues arise. They are:

- (1) Whether the initial entry on the accused's property was unlawful?
- (2) Did the police unlawfully enter the accused's home?

- (3) If the accused consented to entry, was the consent initiated by threat?
- (4) If the accused consented to the search, did the consent terminate when the first gun and ammunition were found; and
- (5) Were the police obliged to give the police caution and advise the accused of his *Charter* rights when the first gun was found?

[41] In the Court's view, both the initial trespass on the property and the entry of the home of the accused were unlawful. Constables Allen and Fong were on patrol in the evening after dark and earlier in the day, were looking for Anderson who was wanted for a parole violation. They were informed that Anderson was a friend of the accused and were given a description of the accused's vehicle. They spotted the accused's vehicle parked facing outwards at Tim Horton's. Both officers say there were two persons in the front seat of the vehicle.

[42] Constable Allen originally said two white males but later was not certain that they were white. The accused's vehicle exited the parking area and was followed by Allen and Fong. Both say that they saw the silhouettes of two persons in the front seats of the vehicle. They followed the vehicle to the accused's driveway and drove past the driveway. The accused's vehicle drove down the accused's driveway and Allen and Fong were not in a position to see and did not see anyone exit the accused's vehicle.

[43] The accused says that his dog was seated in the front passenger seat of his vehicle at the time and Anderson was not in the vehicle. Anderson was not found on the accused's property.

[44] In the Court's view the police at that time did not have reasonable and probable grounds to obtain a search warrant to enter upon and search the accused's property. Neither did the police obtain additional information regarding the possible presence of Anderson in the accused's home before entering the accused's home and searching.

[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.

[51] However, the Court does not accept the testimony of Constable Fairburn for reasons previously given and finds that the accused was neither cautioned not

advised of his *Charter* rights to counsel until after the second gun and drugs were found by the police under the bed. That was too late. The accused was entitled upon arrest or detention to be properly informed of his *Charter* rights under s. 10(b). He was then detained according to Constable MacVicar but was not informed of those rights until after the second gun and drugs were found.

[52] In the Court's view, under the circumstances existing at the time, the accused was not promptly informed of his 10(b) *Charter* rights.

[53] I also find that neither the guns nor the kitbag and drugs were in plain view when they were found and were not found in furtherance of the police's search for Anderson.

[54] Since all of the incriminating evidence against the accused was found after his s. 8 rights were violated, and all the evidence except the first gun and ammunition were found after his s. 10(b) rights were violated, the Court must now under the provisions of s. 24(2) of the *Charter* find that evidence to be inadmissible if it is established that having regard to all the circumstances the admission of that evidence would bring the administration of justice into disrepute.

[55] Weighing the relevant factors and deciding an issue under s. 24(2) of the *Charter*, despite the considerable assistance of Appeal Courts and the Supreme Court of Canada, can be and usually is a tortuous judicial exercise for a trial judge. Moreso where real evidence hangs in the balance and its exclusion may mean the guilty go unpunished and its inclusion may grievously offend vital *Charter* rights.

[56] The test in making a determination under s. 24(2) was set out in *Collins v. The Queen* (1987), 33 C.C.C. (3d). It was then and since has been summarized and followed in subsequent Court decisions. Three factors are ordinarily considered: (1) the fairness of the trial; (2) the seriousness of the police violations and (3) the effect of excluding the evidence.

[57] Other factors referred to by Lamer, J. (as he then was) in *Collins*, particularly in considering the effect of excluding evidence are:

- (1) Did the *Charter* violation occur in circumstances of urgency and necessity?
- (2) Were there other investigating techniques available?

(3) Would the evidence have been obtained in any event?

(4) Is the offence charged against the accused serious?

(5) Is the evidence essential to substantiate the charge?

(6) Are other remedies available?

[58] Another factor which the Court considers to be in issue here, is the integrity of the police in the judicial process. This factor was considered by the Nova Scotia Court of Appeal in *R. v. Innocente*, (1992) 113 N.S.R. (2d) 256.

[59] Dealing first with the fairness of the trial, in this case, the evidence discovered by the police is real evidence and was not conscripted in the strict sense of entrapment. Thus, allowing the evidence at trial would not affect the fairness of the trial and should not be excluded if this were the sole consideration.

[60] Secondly, dealing with the seriousness of the violations. In my view, the *Charter* violations by the police were serious. Two *Charter* rights were violated - s. 8 under search and seizure and s. 10 (a) and (b) in that the accused was not advised of his rights promptly on arrest or detention.

[61] Regarding the s. 8 violation. Initially the police had no judicial warrant to search the accused premises, but nothing of substance prevented the police from seeking a search warrant before entering the premises. Seven officers were present at the scene at the time of entry, so that a watch for Anderson could have been maintained until a warrant was obtained.

[62] What makes the violation more serious in the Court's view is that the police knew they had no grounds to legally search the accused's premises but proceeded regardless and then obtained entry only after a veiled threat to the accused that it would be "easier" if he consented to their entry.

[63] Immediately upon the status of the accused changing from a mere homeowner to an arrestee, he was entitled to be told so and treated accordingly. That is to be informed of all his rights before any further police action against him. The police did not do so. This improperly deprived the accused of his *Charter*

protected opportunity to make a decision as to what he would do when informed of those rights. It was after that point that the bulk of the evidence against him was found.

[64] In this case, if the evidence is found to be inadmissible there is no case against the accused and a guilty person will go unpunished. Conversely, if it were not for the *Charter* violations, there would be very little evidence against the accused. Although the charges against the accused are serious, they are not the most serious criminal charges and thus, in my view, the exclusion of evidence in this case, would expose the administration of justice to less disrepute than to exclude evidence in a more serious case, such as murder.

[65] I have had great difficulty with the police evidence in this case. Four police officers who were at the scene gave evidence on all essential factual elements. Except for the accused alleged instructions to leave, they disagreed on all the other elements as to what took place. The Court fully understands that witnesses see events differently and that it is natural over time to forget certain things in attempting to accurately recall those events. I also believe for the most part, that the police officers made a sincere effort to tell the truth.

[66] However, we are not here dealing with ordinary witnesses. These witnesses are trained police officers who know that detailed notes on critical points are essential to accurate recollections, especially where, as I'm sure is the case here, the police are dealing with several cases simultaneously.

[67] What I found most disconcerting was the evidence of Constable Fairburn, which I have found to be not wholly credible. Constable Fairburn's testimony at the hearing in the Court's view was directed to what he thought would best serve to save this case. As well, all of the items that he found, the first gun, the kitbag and drugs and the bag of marijuana, he found in areas where it was impossible for Anderson - estimated to be over six feet in height and 250 pounds in weight - to hide, and none were plainly visible before being uncovered.

[68] It almost seems that when Constable Fairburn flipped over the blanket on the bed covering the money and bullet proof vest and which in the Court's view could not have covered Anderson, that is, the blanket on the bed, his search was thereafter not only for Anderson but for possible evidence against the accused. I say that notwithstanding that Constable Fairburn says he found the bulletproof vest

later under the bed. The evidence of both the accused and Constable MacVicar, which I accept, was that the vest was found before Constable Fairburn looked under the bed.

[69] Constable Fairburn earlier said the arresting rights reading took place after the second gun was found but changed that statement and said that took place immediately after he found the first gun. He earlier indicated that he searched the attic before finding any guns, but at the hearing, after it was suggested that the search for Anderson was completed when the first gun was found, he says that the attic had not been searched before the first gun was found.

[70] At the hearing he says the first gun was found standing uncovered in a corner of the laundry room closet, but had earlier indicated as others testified that the gun was found under clothing. All of these inconsistencies and the testimony of Constable Fairburn, lead me to conclude that Constable Fairburn was being less than frank with the Court.

[71] During my years on the bench I have had many police officers give testimony before me. With very few exceptions my experience is that police officers make a sincere effort to recall events accurately. Unfortunately, I find Constable Fairburn's testimony to be another exception.

[72] The police force is the front line and an integral part of the whole of the administration of justice. The Court's part of the administration of justice ought to be able to rely on the police to make a sincere effort to do justice in criminal cases.

[73] As Hallet J.A. said at Page 6 of 6 in *R. v. Innocente, supra*, "the integrity of the police in the judicial process is fundamental". I find the integrity of the police in this case to be wanting. The accused's *Charter* rights were violated when there was no legitimate reason for the violation.

[74] If the police want to search a private residence, there must be reasonable and probable grounds to conduct the search. In this case there were none, if there are reasonable and probable grounds to conduct a search then judicial authorization in the form of a search warrant must be obtained unless the police are in hot pursuit or there is a real risk that vital evidence will be lost. There was no hot pursuit or other legitimate reason to justify the absence of a search warrant in this case.

[75] Knowing there were no reasonable and probable grounds for a search of the accused's home, Constable Fairburn guessed correctly that access to the house might be gained by obtaining consent by way of a veiled threat.

[76] After gaining access the accused's *Charter* rights were again violated and after those series of events Constable Fairburn attempted to colour the evidence to suit what he thought it should be to justify his actions in the face of the Court. What would be the community's view if in the face of that evidence the Court were to allow the evidence to be used against the accused?

[77] S. 24(2) of the *Charter* reads:

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.

[78] In *Collins v. The Queen, supra*, Justice Lamer states at pp. 12 and 16:

The concept of disrepute necessarily involves some element of community views and the determination of disrepute thus requires the Judge to refer to what he conceives to be the views of the community at large. Members of the public generally become conscious of the importance of protecting the rights and freedoms of the accused only when they are in some way brought closer to the system either personally or through the experience of friends or family.

[79] Professor Gibson, who is earlier referred to in the decision, recognized the danger of leaving the exclusion of evidence to uninformed members of the public when he stated at page 426 and Justice Lamer quotes:

The ultimate determination must be the Courts because they provide what is often the only effective shelter for individuals and unpopular minorities from the shifting winds of public passion.

[80] Justice Lamer goes on:

The *Charter* is designed to protect the accused from the majority so the enforcement of the *Charter* must not be left to that majority.

[81] He goes on to say in the next paragraph:

The approach I adopt may be put figuratively in terms of the reasonable person test proposed by Professor Yves Marie Morisset in his article the Exclusion of Evidence under the *Canadian Charter of Rights and Freedoms*. In applying s. 24(2) he suggested that the relevant question is, would the admission of the evidence bring the administration of justice into disrepute in the eyes of the reasonable man, dispassionate and fully apprised of the circumstance of the case.

And I would add that “fully apprised of the circumstances of the case” includes both the facts and the law.

[82] In the Court’s view to allow any of the evidence in this case to be admitted against the accused would bring the administration of justice into disrepute. Thus, I would grant the accused’s application for exclusion under s. 24(2) of the *Charter*.

Tidman, J.

