

**SUPREME COURT OF PRINCE EDWARD ISLAND**

Citation: R. v. King, Yeo & Keenan, 2013 PESC 8

Date: 20130429

Docket: S1-GC-960

S1-GC-961

S1-GC-962

Registry: Charlottetown

**Between:**

**Her Majesty the Queen**

**Informant**

**And:**

**Kenneth Bradley King, Jason Norman Yeo and  
Samantha Jean Keenan**

**Accuseds**

Before: The Honourable Justice Gordon L. Campbell

Appearances:

Thomas P. Laughlin & Scott Barry, on behalf of the Federal Crown

Brendan Hubley, on behalf of Kenneth Bradley King

Mitchell MacLeod, on behalf of Jason Norman Yeo

Place and Date of Hearing:

Charlottetown, Prince Edward Island  
April 22<sup>nd</sup> & 23<sup>rd</sup>, 2013

Place and Date of Oral Judgment:

Charlottetown, Prince Edward Island  
April 26, 2013

Place and Date of Written Decision

Charlottetown, Prince Edward Island  
April 29, 2013

**PRACTICE - Criminal Law - *Charter of Rights and Freedoms* - Section 8 - arrest without warrant - reasonable and probable grounds to believe offence had been committed. No basis to exclude evidence under Section 24(2) of the *Charter*.**

**CASES CONSIDERED: *R. v. Storrey*, [1990] 1 S.C.R. 241; *R. v. Bush*, 2010 ONCA 554; *R. v. Debot*, [1989] 2 S.C.R. 1140; *R. v. Grant*, 2009 SCC 32; *R. v. Guarino*, 2013 ONCJ 77.**

**STATUTES REFERRED TO: *Canadian Charter of Rights and Freedoms*; *Criminal Code of Canada*.**

**Campbell J.:**

### **Background**

[1] The accused, Kenneth Bradford King, seeks a declaration that his right to be secure against unreasonable search and seizure as guaranteed by Section 8 of the ***Canadian Charter of Rights and Freedoms*** was violated, and further, that all evidence obtained as a result of the said ***Charter*** violation be excluded, pursuant to section 24 (2) of the ***Charter***.

[2] The grounds for the motion are that the accused was unlawfully arrested on July 4, 2012, as the arresting officer did not have reasonable grounds upon which to arrest him. The accused was searched incident to arrest, which search was, in the submissions of Mr. King's counsel, unreasonable and in violation of Mr. King's section 8 right against unreasonable search and seizure.

[3] At the time of his arrest, Mr. King was in a shed on the property at 36 Bonnie Blink Drive, in Charlottetown, P.E.I., in the company of Jason Norman Yeo. Yeo had been under surveillance and was suspected of operating a hydraulic press in the shed in order to prepare cocaine for distribution. Yeo and King, and Yeo's girlfriend, Samantha Jean Keenan, were all arrested on that occasion.

[4] In the two months leading up to the arrest the police repeatedly observed Yeo entering and leaving the shed located at the rear of the Bonnie Blink Drive residence. He was usually in the company of at least one other individual. At least two different individuals were identified accompanying Yeo, and on some occasions it was not possible to identify the individual with Yeo.

[5] The police had received information from confidential human sources indicating that Yeo was using the hydraulic press in the shed at the rear of property leased to his former girlfriend, Ms. Burke. The source also provided the address of the residence, and stated that the accused, Mr. King, "cooked" cocaine for Yeo.

[6] The police located the owner of the residence in question, Mr. Gallant, who confirmed it was leased to a Ms. Burke. The landlord further confirmed that in the spring of 2012, Yeo had attended at his office to pay a fuel bill for the residence. The landlord did not believe that anyone actually resided in the residence, and the police surveillance supported that view. The only signs of activity at the location were when Yeo arrived and attended at the shed. The grass had been allowed to grow for some time without being cut, and a set of car tires remained in the driveway throughout surveillance.

[7] From the evidence, it is clear that Yeo was the principal target of the surveillance conducted by police. As counsel for Mr. King pointed out, most of the evidence related to Yeo and his activities. Glanville knew that Yeo had a "substantial" criminal record relating to drugs and a record relating to violence. Glanville testified with respect to a number of the grounds which led him to believe Yeo was involved in illegal activity.

[8] Cst. Glanville gave evidence with respect to a traffic stop on February 17, 2012 near Truro, Nova Scotia when Yeo was with his girlfriend, Samantha Keenan, and Calder Collins. Because of erratic driving, Yeo was pulled over by police. The police found some open liquor in the car, a radar detector, a small amount of marijuana and a large sum of Canadian cash packaged in different envelopes and baggies, and totaling approximately \$6000 -8000. The cash on that occasion was claimed by Ms. Keenan who initially said it was to purchase a car in Halifax and later said it was to take a trip down south.

[9] Two weeks later, Yeo was returning from Jamaica with Collins. Both were arrested by the Canadian Border Services Agency (CBSA) on suspicion of importing drugs. They were "dry celled", during which Collins passed a package containing ½ pound of cocaine. Collins admitted to having purchased 1 pound of cocaine for \$8000, although he expressed no idea of its street value, or of how or to whom he would sell it. He denied knowing the whereabouts of the other half pound. Regrettably, a second package of cocaine broke open in Mr. Collins' stomach and he died of a cocaine overdose one day later.

[10] CBSA also found a tracking number on Yeo's cell phone for a package from China addressed to what was believed to be a fictitious person at 36 Bonnie Blink Drive. The package contained benzocaine, a substance commonly used as a cutting agent to increase the volume of cocaine.

[11] On April 28, 2012, Yeo was intoxicated and became unruly at a hotel in Montreal. He was there with his girlfriend and with Chase Roper, and Roper's girlfriend. The latter two left as a result of Yeo's behavior. Hotel management called the police who arrested Yeo and his girlfriend. Police found a white powdery

substance believed to be cocaine on the bed table, and found approximately \$32,000 cash. Ms. Keenan initially claimed the cash saying she had earned it doing exotic dancing. Constable Glanville believes that Yeo has now claimed the cash as his own.

[12] The police received information from various informants who advised that Yeo was receiving shipments of cocaine and had a hydraulic press which he used to prepare the cocaine for distribution. Their surveillance and other police information confirmed that Yeo is usually accompanied by at least one other person when he is dealing with drugs. All of the information available to the police led them to believe that Yeo was involved in drug trafficking at a higher level, including importing cocaine, cutting cocaine at multiple levels, and using others to insulate himself. Their information also led them to believe Yeo used the shed at 36 Bonnie Blink Drive as a location to prepare cocaine, using a hydraulic press.

[13] Further surveillance of Yeo disclosed the following:

- On May 9, 2012, Yeo and Chase Roper attended at 36 Bonnie Blink Drive and Yeo briefly entered the shed following which they went to Roper's place. Police then observed Yeo, who was driving, and Roper, pull into a convenience store parking lot. An unknown female got out of her vehicle's driver's seat and went around and got into the passenger seat. Roper got into the driver seat and Yeo got into the backseat. After viewing activity which the officer described as being consistent with a drug purchase, Yeo and Roper returned to Yeo's vehicle. They then drove to a service station and pulled in beside an undercover officer who had texted Roper to arrange a purchase. The purchase took place, and they discussed the potential sale and purchase of a large quantity of marijuana as well.
- On June 15, 2012, at approximately 3:51 p.m., Yeo attended the shed briefly and immediately returned to his residence on Maxfield Avenue, Charlottetown, P.E.I.. Upon leaving the shed his left hand jeans pocket clearly showed the impression of a large square packet.
- On June 22, 2012, at approximately 7 p.m., Yeo and Roper entered the shed and return to the car in less than one minute.
- On June 22, 2012, at approximately 11:40 p.m., Yeo's vehicle arrived at 36 Bonnie Bink Drive. Five minutes later another vehicle arrived. Two males met at the front of the house. One minute later, both departed.
- 30 minutes later, on June 23, 2012, at approximately 12:12 a.m., Yeo's car arrived at the 36 Bonnie Blink Drive. The passenger from the vehicle

went to the shed. The passenger returned to the vehicle two minutes later and the vehicle left.

- On June 25, 2012, approximately 7:06 p.m., Yeo and a passenger arrived at the property and went into the shed. Approximately 10 minutes later they returned to Yeo's vehicle and returned to Yeo's residence on Maxfield Avenue.

[14] Constable Glanville also testified that in connection with their investigation they received information from several confidential human sources with three of them, designated as H, I, and J, being the most pertinent. Sources H and I had criminal records. Each has been paid for information in the past. He testified that each of the three sources were considered reliable and none of them had ever been convicted of perjury or misleading the police. Each provided information based on their first-hand knowledge. While the information from all three was considered reliable, they had only acted on the information received from source J up to the date of the arrest. Source J does not have a criminal record and has been paid for information on one occasion.

[15] These sources separately provided similar information to the police regarding Yeo's activity, including when he was running low and when he was re-supplied with cocaine together with the names of those with whom he associated and who assisted him. They also informed police that Yeo had taken a trip to Montreal with Chase Roper and their respective girlfriends, and further that Yeo used benzocaine to "cut" the cocaine he purchased. Specifically, source J advised the police on June 3, 2012, that Yeo had a press for "coke" which was in a shed at Yeo's ex-girlfriend's place. The source also advised the ex-girlfriend's name was Crystal Burke and that the address of the property was 36 Bonnie Blink Drive. Further the source advised that Yeo used King has a "cooker for crack". Source H also provided information with respect to the shed and its location.

[16] On July 4, 2012, at 10:18 p.m., the police were monitoring Yeo's movements and saw him leave his Maxfield residence. Shortly after, Yeo arrived at 36 Bonnie Blink Drive, in the company of another individual, later identified as Brady King, the accused. Yeo parked his car in the driveway facing the shed. Yeo went into the shed and the other individual stood just outside the shed on the right side of the doorway. The headlights on Yeo's vehicle were left on, and they were "lighting up the front of the shed and interior of the shed". Constable Glanville said he "could clearly see Jason Yeo inside the shed and he was facing the hydraulic press". He said, "I could see that he was ..it appeared that he was operating the press. I was still a distance away, but from his body movement, and what he was doing, he was operating the press". Cst. Glanville then turned to the other police officers present and told them Yeo was

operating the press and there was another male, unknown to Glanville, standing outside the building.

[17] As the police officers moved closer to the shed, the unknown male (King) stepped into the shed and was standing in front of Yeo and he was looking down at what Yeo was doing. The unknown male continued to watch Yeo as the police got closer. The police remained undetected because of the headlights shining into the shed. They then identified themselves and advised Yeo and the unknown male that they were under arrest. During the arrest, Cst. Glanville attended to Yeo and others attended to King. Glanville testified that he wanted to keep Yeo separate from King and from Keenan (Yeo's girlfriend) because of his belief that Yeo used others to carry drugs and might try to pass drugs to one of them.

[18] Constable Eric Campbell initially took charge of arresting King. After having King lay face down on the ground, Campbell handcuffed his hands behind his back and conducted a pat down search of the back and sides of King. As King was lying on his stomach, Constable Campbell did not conduct any search of the front of King. Others involved moved King to a location beside a vehicle. Shortly thereafter, Constable Reggie Wood of the Charlottetown City Police arrived to transport King to jail. As a safety precaution, he frisk searches any individual getting into his vehicle for weapons or anything else that might potentially cause harm to him or the accused. Upon frisking King he found a block of hard material in the front waste area under Mr. King's sweater. He removed the material from King and found it was a hard white substance wrapped in plastic.

[19] Constable Campbell indicated that he felt he had reasonable and probable grounds to arrest King based on the "totality of circumstances", given the previous surveillance and information that they had with respect to Yeo, and the information that a cocaine press was being used in the shed. He stated he felt if someone was in the shed with Yeo, under those circumstances, he was involved in the commission of the offence with Yeo.

[20] Cst. Glanville relied on the information he received in reaching the conclusion he had reasonable and probable grounds to arrest Yeo and the unidentified male with him. He reiterated that he believed Yeo was involved in trafficking "at a higher level", was mixing drugs for resale, used others as mules or couriers to transport drugs and to insulate himself. Glanville was of the belief that those attending with Yeo were assisting Yeo and would be involved in the commission of the offence as well, by carrying the drugs for Yeo. Glanville relied as well on the various pieces of information from the informants of which he became aware prior to the arrests, including that Yeo kept a hydraulic press at 33 Bonnie Blink Drive and that he used others to cook his cocaine. He also reiterated his reliance on information relating to the state and status of the property at 36 Bonnie Blink Drive, including that it was

believed that the residence was vacant, no activity was observed at the residence other than Yeo attending at the shed, those visits were frequently late at night, frequently for very brief periods, following which Yeo frequently returned immediately to his Maxfield Avenue residence.

## Analysis

[21] Both Crown and defence counsel acknowledge that there was no warrant for the arrest of King. The Crown must therefore rebut the presumption the arrest was unreasonable. To do so, they must show the arrest was nevertheless authorized by law, that the law itself is reasonable, and that the manner in which the search was carried out was reasonable. Defence counsel maintains the arrest was not authorized by law, but does not challenge the law itself or the nature of the search.

[22] The Crown relies on s. 495 (1) of the *Criminal Code of Canada* as the authorization for the arrest. That section 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 in indictable offence;

[23] In *R . v. Storrey*, [1990] 1 S.C.R 241, Cory, J., speaking for the Supreme Court of Canada stated, at paragraph 17:

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.

[24] Referring to the need for such grounds, Cory J. stated at paragraph 15:

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.

[25] Firstly, with respect to Cst. Glanville's own belief, there was nothing in the evidence which tended to show that the police officer had other than an honest,

subjective belief that he had reasonable and probable grounds to arrest Mr. King. Defence counsel maintains that, even if that was so, objectively, those grounds did not exist.

[26] What constitutes reasonable and probable grounds? Speaking for the Ontario Court of Appeal in *R. v. Bush*, 2010 ONCA 554, a case dealing with reasonable and probable grounds in drinking and driving cases, Justice Durno said, at para. 37 :

Between suspicion and proof beyond a reasonable doubt lies reasonable and probable grounds. Section 254 (3) of the Criminal Code authorizes peace officers to demand Intoxilyzer breath samples provided the officer “has reasonable and probable grounds to believe that a person is committing or at any time within the preceding three hours has committed” the offence of impaired operation or driving “over 80” (emphasis in original). **Reasonable and probable grounds does not amount to proof beyond a reasonable doubt or to a prima facie case:** See Censori at para. 31 and *R. v. Shepherd* 2009 SCC 35 at para. 23. **(Emphasis added).**

[27] Included in the information upon which the police relied is the information they obtained from confidential informants. Such information is subjected to its own tests. In *R. v. Debot*, [1989] 2 S.C.R. 1140, Justice Wilson stated at paragraph 15:

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

[28] As defence counsel points out, the test has become commonly known as the “three C’s”:

- a. is the information supplied compelling,
- b. is the informant credible, and
- c. has the information been corroborated?

[29] Defence counsel states that Mr. King was arrested simply because he was with Mr. Yeo. He points out the arresting officer did not know the identity of Mr. King until after the arrest and therefore the information from the informant stating that “King cooked cocaine for Yeo” could have played no part in the arrest.



[30] Leaving out the references to King cooking cocaine for Yeo, the information supplied by the informants included facts relating to the following:

- the address of 36 Bonnie Blink Drive,
- the presence of the shed at the rear of that property,
- the fact it was rented in the name of Yeo's previous girlfriend,
- the fact her name was Crystal Burke,
- that Yeo frequently attended at the shed,
- that those visits frequently occurred at night,
- that Yeo frequently attended with others,
- that Yeo was dealing in cocaine,
- that Yeo had a hydraulic press in the shed, which he used for cocaine preparation,
- that Yeo relied on others to transport cocaine for him.

[31] By their own surveillance and investigation, the police were able to corroborate that 36 Bonnie Blink Drive was rented in the name of Crystal Burke and that Yeo had made a payment, in Crystal Burke's absence, for fuel oil for that property. They also independently corroborated the fact there was a shed on the property, that Yeo frequently attended at the shed, frequently with others, and frequently at night. By having an undercover officer purchase drugs from Yeo, they corroborated the fact that Yeo was dealing in drugs. Prior to the arrest, the arresting officer observed the hydraulic press in the shed and observed Yeo performing actions which appeared as though he was operating the press. All of that evidence is compelling and corroborated. The police stated that based on their knowledge and dealings with the informants, each was credible and reliable and none had ever been known to mislead the police. The cross corroboration of the informants information also supports the finding they are credible.

[32] In addition to their own surveillance at Bonnie Blink Drive and Maxfield Avenue, the police officers had several other pieces of information relating to recent drug activity in Yeo's presence. That included the occasions of the previously noted traffic stop in Nova Scotia, Yeo's return from Jamaica with Calder Collins, the presence of a tracking number on Yeo's cell phone for a package containing a known cutting agent, and the presence of cocaine in the hotel room in Montreal, together with a large quantity of cash. This information must also be assessed in the context of the police officers' knowledge that Yeo has a significant drug-related criminal record.

[33] It is abundantly clear the police had ample grounds upon which to arrest Yeo. King was with Yeo in the shed during which Yeo was observed operating the hydraulic press. The evidence shows King was in very close proximity to Yeo and was watching Yeo's activities. Given all of the information the police had, including the last summarized information received from confidential human sources, and given the

police observations of Yeo's most frequent modus operandi of involving other people, and given the fact the two individuals were in an unlit shed at the back of an unoccupied residence at 10:30 or 11 o'clock at night, I am of the view that a reasonable person, standing in the shoes of the arresting officer, would conclude there were reasonable and probable grounds to believe the male person in the company of Yeo was involved in the commission of the crime of having possession of an illegal substance for the purpose of trafficking.

[34] Having said that, I will deal with the application for the exclusion of evidence pursuant to s. 24(2) of the **Charter of Rights**, in the event I am held to be incorrect in reaching the conclusion I have reached.

[35] Section 24 (2) reads as follows:

24 (2) 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.

[36] In **R. v. Grant**, 2009 SCC 32, the Supreme Court of Canada established the analysis to be undertaken when considering a motion to exclude evidence obtained in breach of **Charter** rights. At paragraph 71, the court said:

A review of the authorities suggests that whether the admission of evidence obtained in breach of the **Charter** would bring the administration of justice into disrepute engages three avenues of inquiry, each rooted in the public interests engaged by s. 24(2), viewed in a long-term, forward-looking and societal perspective. When faced with an application for exclusion under s. 24(2), the court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to:

- (1) the seriousness of the **Charter**-infringing state conduct (admission may send the message the justice system condones serious state misconduct),
- (2) the impact of the breach on the **Charter**-protected interests of the accused (admission may send the message that individual rights count for little), and
- (3) society's interest in the adjudication of the case on its merits.

[37] Dealing firstly with the seriousness of the **Charter**-infringing state conduct, I find there was nothing indicating bad faith conduct on the part of the officers involved.

The conduct was not flagrant or without any foundation. Further, at the time of the arrest of Yeo, at the very least the police had the authority to detain King for questioning. Upon detaining King, police are authorized to know his identity. Upon King identifying himself to police, the police would then have had the grounds to arrest King based on the information they had received from confidential human sources that he was “cooking” cocaine for Yeo. Even without knowing King’s identity, the police are entitled to conduct a search as might be necessary to ensure their safety and the safety of others present, including the detainee. All of that leads me to conclude the infringing conduct was not serious and would not favor exclusion of the evidence obtained.

[38] Secondly, dealing with the impact on Mr. King’s protected interests, I am of the view that the search itself was minimally intrusive, consisting only of an exterior pat down. Defence counsel made reference to the fact there were two searches of the accused, one by Cst. Campbell and the other by Cst. Wood. Effectively, King was patted down on the back by Campbell and on the front by Wood. The overall conduct did not amount to more “searching” or a greater intrusion than would have occurred had one officer done the full pat down.

[39] Finally, the court in **R. v. Grant**, supra, stated that the court must ask whether the truth seeking function of the criminal trial process would be better served by admission of the evidence or its exclusion. At paragraph 82, the court said:

The fact that the evidence obtained in breach of the **Charter** may facilitate the discovery of the truth and the adjudication of the case on its merits must therefore be weighed against factors pointing to exclusion, in order to “balance the interests of truth with the integrity of the justice system”: Mann, at para. 57, per Iacobucci J. The court must ask “whether the vindication of the specific **Charter** violation through the exclusion of evidence exacts too great a toll on the truth seeking goal of the criminal court”: **R. v. Kitaitchik** (2002), 166 C.C.C. (3d) 14 (Ont. C.A.), at para. 47, per Doherty J.A.

[40] Amongst other cases, defence counsel cited the case of **R. v. Guarino**, 2013 ONCJ 77. Justice Harris of the Ontario Court of Justice dealt with a man who was arrested because he was a passenger in a vehicle bearing the license plate of the vehicle which had been reported stolen one year earlier. Without going into the facts of that case here, the judge concluded that the **Charter** breach was a serious one in that the police officers had no objectively reasonable basis for arresting the accused. He found the detention of the accused was arbitrary and the subsequent search was unreasonable and he excluded the evidence found in the search. That case is distinguishable from this case in that I have found there was ample objectively reasonable evidence upon which to arrest Yeo and, incident to that arrest, detain King.

The judge in that case specifically declined to deal with the question of whether a search pursuant to detention would have been reasonable.

[41] Considering the seriousness of the criminal charges before the court, which increases society's interest in their prosecution, the minimal impact of any breach upon the accused's protected interests, the requirement for King to identify himself upon detention, and the high reliability of the evidence, I find the exclusion of such evidence in the circumstances would bring the administration of justice into disrepute.

[42] In conclusion, I deny the accused's motion for a declaration that his Section 8 **Charter** rights against unreasonable search and seizure had been violated. I conclude further, in the event I am incorrect in that finding, that the repute of the administration of justice is best served in the long term, forward-looking and societal perspective, by admitting the evidence obtained during the disputed search.

April 29, 2013

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Campbell J.