
CANADA / JUDGMENT

R. v. Arthur

2012 BCSC 1960

COURT

Supreme Court of British Columbia

DECIDED

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2012 BCSC 1960 R. v. Arthur

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Arthur,

2012 BCSC 1960

Date: 20121121

Docket: 25928

Registry: Vancouver

Regina

v.

Robert Charles Arthur

Before: The Honourable Madam Justice Maisonville

Corrected Judgment:

This judgment was been corrected on January 10, 2013,

on page 1

with the addition of Crown counsel

Oral Ruling on Disclosure Application

Counsel for the Crown:

Chris Greenwood

B.K. Girn

Counsel for the Accused:

N.L. Cobb

Place and Date of Trial/Hearing:

Vancouver, B.C.

November 21, 2012

Place and Date of Judgment:

Vancouver, B.C.

November 21, 2012

Date of Correction:

January 10, 2013

- [1] THE COURT: Robert Charles Arthur is charged by indictment with having the proceeds of crime, \$202,685, contrary to s. 354(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46 and with trafficking in cocaine contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19. He brings this application for disclosure in advance of his trial. The documents that he seeks are the law enforcement investigative files related to a project known as E-Pistology and certain documents relating to an investigation known as E-Poem.

Background

- [2] It is important to bear in mind that there are three separate investigations which touch on Mr. Arthur. The first of these was Project E-Poem commenced in 2007, a project of the RCMP which was conducted chiefly in 2008/2009. The second is E-Pentatonic which commenced in late 2008 and went through to April 2009. The third is project E-Pistology.
- [3] Respecting Count 1 of the indictment, the background is that Mr. Arthur was arrested in April 2009 during the course of Project E-Pentatonic. He had been surveilled driving to various locations in Burnaby and Vancouver, British Columbia on April 9, 2009. Later that day, it was alleged that he was observed leaving a residence in Vancouver carrying what appeared to be a heavy gym bag which he put in the trunk of his vehicle. He was observed taking the bag out, according to the will-say provided by Corporal Don Powell, who formed the opinion that a drug transaction had occurred. Mr. Arthur was arrested, and a search of the gym bag disclosed \$202,685. The materials from Project E-Pentatonic reference Project E-Poem. In relation to this count, Mr. Cobb, on behalf of the accused, argues he needs the investigative file from E-Poem produced. He states that he needs the investigative file because this will possibly aid in the Charter argument that Mr. Arthur intends to bring that any warrantless arrest and ensuing search consequent to the arrest were contrary to ss. 8, 9 and 10 of the Canadian Charter of Rights and Freedoms.

- [4] In respect of Count 2, Mr. Arthur was arrested again on May 4, 2009, and found in possession of a box containing 10 kilograms of cocaine. The arrest resulted from information gathered on Project E-Pistology. In connection with the E-Pistology investigation, Mr. Arthur argues that he needs to have the investigative file because he will be arguing that the intercepts that formed part of the investigation were unlawful as he was likely a known person for the purposes of obtaining an interception of private communication. He proposes to argue the case of *R. v. Chesson*, [1988] 2 S.C.R. 148.
- [5] It is important to understand where Mr. Arthur features in the E-Pistology investigation. He was not a target. During the course of that investigation, Corporal Anita Furlan's will-say outlines that certain e-mails were intercepted disclosing, in her opinion, that there was going to be a drug transaction occurring. These interceptions occurred on May 3 and 4, 2009. As a consequence, surveillance was established. An arrest occurred on May 4, 2009. Mr. Arthur was searched and found in possession of 10 kilograms of cocaine. As noted, this forms the basis of Count 2 of the indictment.
- [6] As a consequence of the review of the materials of the investigation, it was determined that four of the e-mails as well as one instance of surveillance in February related to Mr. Arthur. He was not, however, known at that time, and it was learned that Mr. Arthur was implicated only by re-examining the file. There was an e-mail indicating, in Corporal Anita Furlan's opinion, that there was going to be a drug transaction and, consequently, surveillance was set up, and an individual turned up. That individual who turned up and was arrested on May 4, 2009 was Mr. Arthur. That was a consequence of a communication between one of the targets of the wiretap investigation of Christopher Mehan who was planning the sale of a large quantity of cocaine to an unknown male using the address, "bigdaddykane@prosperitas.ca".
- [7] In anticipation of that meeting, Combined Forces Special Enforcement Unit, CFSEU, set up surveillance outside of Mehan's residence on May 4, 2009. On that day, Mr. Arthur arrived at the Mehan residence alone in a vehicle. He was observed by the officers to be going into the building empty-handed and exited carrying a box that appeared to be heavy. It was placed in the trunk of his vehicle and he drove away.
- [8] Because of this limited surveillance and e-mails now known to involve Mr. Arthur, defence counsel argues that further disclosure needs to occur to enable Mr. Arthur to argue his Charter violations. Defence counsel argues that disclosure of both the E-Poem and E-Pistology investigative files is required to advance the argument that the interceptions were unlawful. It is Mr. Arthur's intent to argue that the authorizations, P19 and P33, of 2009, upon which the interceptions were based, were unlawful and contrary to s. 8 of the Charter. If that is so, it is argued, the arrest of Mr. Arthur and in turn the search incidental to arrest were unlawful as they stemmed from unlawful interception.

Disclosure Requests

- [9] Before the preliminary hearing set for Provincial Court, correspondence commenced between the defence and the Crown in relation to additional disclosure. Chiefly, there was disclosure requested surrounding the E-Pistology investigation. Ultimately, at Provincial Court, there was a consent committal.
- [10] Defence counsel, in addition to relying upon the basic rule set out by the Supreme Court of Canada and noted in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326, relies upon the cases of *R. v. Shayesteh*, (1996) 31 O.R. (3d) 161 (C.A.); *R. v. Chaplin*, [1995] 1 S.C.R. 727; *R. v. Dixon*, [1998] 1 S.C.R. 244; *R. v. Egger*, [1993] 2 S.C.R. 451; and *R. v. Pires*; *R. v. Lising*, 2005 SCC 66. Additionally provided to the Court by counsel for Mr. Arthur were the cases of *R. v. Bottineau* (2005), 32 C.R. (6th) 70 (Ont. S.C.J.); *R. v. Willis* (1996), 192 A.R. 151 (P.C.), a decision of the Alberta provincial court; *R. v. Tran*, [2006] O.J. No. 3561 (S.C.J.); and *R. v. Poloni*, 2006 BCPC 609 and *R. v. Poloni*, 2006 BCPC 616, two B.C. decisions in this regard.
- [11] The factual background of the requests for disclosure is as follows. On October 1, 2010, the Public Prosecution Service of Canada provided the main disclosure of the E-Pentatonic investigation. Some additional materials were provided.
- [12] Defence counsel says what was received is not sufficient, and that as a consequence of the interceptions obtained in E-Pistology, Mr. Arthur has the right pursuant to s. 7 of the Charter to argue the validity of the authorizations noted above. As a consequence of making that s. 7 argument, he needs to have further disclosure in an effort to ascertain whether the authorization was false or misleading and whether there has been full, frank, and fair disclosure. It is important to note that defence counsel has now been provided with those authorizations and affidavits in support of those authorizations, although Crown takes the position that Mr. Arthur was not a known, as that term is used in the case law and the Criminal Code, nor was he a target of the investigation.
- [13] Of the three projects, E-Poem, E-Pistology and E-Pentatonic, which involve or touch on Mr. Arthur, the last project was E-Pistology which involved the Combined Forces Special Enforcement Unit, the CFSEU. Much of E-Pistology has already been disclosed. Letters going back and forth between defence and Crown counsel commenced October 1, 2010, in which the Crown provided to defence counsel materials on E-Pistology including a synopsis, detailed narrative witness list, identification target sheets, authorization P33 containing certain intercept communications, investigative reports, surveillance reports, officers' notes, exhibits, and photographs.

- [14] Materials for E-Pentatonic were similarly disclosed including a tracking warrant, a general warrant respecting a Porsche Cayenne, five production orders relating to various bank and credit union savings accounts, and a search warrant for certain premises on 148th Street in Surrey. As well, there was a CD containing a Report to Crown Counsel, photos of seized cash, statements on CD, both audio and video surveillance, photos of Mr. Arthur, and photos of the residence of Mr. Arthur.
- [15] Defence counsel had indicated that the affiant for the relevant authorizations in respect of the affidavits being sought from the E-Pistology investigation was the same officer who was the chief investigating officer respecting Mr. Arthur's case. However, Crown counsel indicated that the affiant for the two authorizations noted above is actually Brent Wilcott, and defence counsel changed his submission in this regard. The Crown had disclosed the affidavits and authorizations. They have additionally disclosed the surveillance and e-mails noted above which followed upon the interceptions.
- [16] Respecting E-Pistology, Mr. Arthur was surveilled as an unknown male once in February. Then, there were four additional e-mails obtained as a consequence of an investigation which commenced in Los Angeles in 2008. Members of the Los Angeles Drug Enforcement Agency had, as part of their investigation, set up a BlackBerry network in the United States with a domain name, "goosebomb.com," through which they intercepted electronic communications from BlackBerry devices on a network pursuant to a federal wiretap order. During the course of their investigation, it became apparent that individuals in the Lower Mainland were involved and, consequently, authorizations to intercept private communications were obtained in Canada. Those have been provided to defence counsel as part of disclosure. Those are the authorizations, P19/2009 and P33/2009, referred to above, both of which, along with the affidavits in support, have been provided to defence counsel.

The Positions of the Parties

- [17] Crown counsel says that E-Poem was a project of the RCMP in 2007. Mr. Arthur was not a target; rather, his associates were. No significant evidence was ever obtained against Mr. Arthur, nor were there any charges laid in respect to Mr. Arthur. They submit that they have disclosed all of the relevant information on that investigation.
- [18] As noted, Mr. Cobb, on behalf of the accused, submits he needs more than Crown Counsel has provided to date to ultimately be in a position to argue that the arrests were unlawful. He submits he needs the entire investigative file of the two projects, E-Poem and E-Pistology. The Court was advised that the files are very large, in one case in excess of 14,000 documents. Crown counsel asserts that everything that was relevant and touching on Mr. Arthur in both E-Poem and E-Pistology has been disclosed. The Crown further argues that even if the defence were to establish that there was an unlawful authorization, that would not be grounds to argue that Mr. Arthur was unlawfully arrested.

Issue

- [19] The Crown frames the question the Court must determine as follows. Are the interceptions in issue? If yes, it follows there should be greater disclosure. If no, then the disclosure made to date is sufficient.
- [20] As I see the key issue, it is whether there has been sufficient disclosure at this stage to enable Mr. Arthur, the accused, to bring an argument in respect of the lawfulness of his arrest.

The Crown Argument

- [21] The Crown will not be relying upon the e-mails which ensued from the interceptions obtained in the course of E-Pistology in this prosecution. E-Pistology targeted other individuals. Those matters are now before the courts in respect of other individuals. The investigative file in those matters contains voluminous materials and unproven allegations including highly sensitive personal information about other individuals. The affidavits and authorizations have, in any event, been disclosed to Mr. Arthur and provided. That forms the basis of Count 2. All of the materials which form the subject matter of E-Pentatonic itself have been disclosed. The few items from E-Poem relevant to Mr. Arthur have been disclosed, and the Crown will not be relying upon those materials, in any event, in this prosecution.
- [22] Mr. Greenwood, for the Crown, argues that the lawfulness of the interceptions makes no difference, in any event. He argues if there were defects in the authorizations or wiretap evidence that is set out in the authorizations procured by the affidavit in support of P19/2009, P33/2009 and E-Pistology, that is of no consequence because this case before the Court is one concerned with the arrest of the individual which involves different considerations. That this is so is made clear by the Supreme Court of Canada in the *R. v. Storrey*, [1990] 1 S.C.R. 241 decision. Mr. Justice Cory, for the unanimous Court, held at paras. 16-17:

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.

[23] Consequently, it was argued that the issue before the Court of the arrest will be whether someone standing in the shoes of Corporal Anita Furlan had reasonable and probable grounds to make the arrest. The issue before the Court is not to look behind the authorizations and affidavits in support to obtain the e-mails upon which Corporal Furlan relied. The assessment is directly focused upon her grounds for belief.

[24] Such an analysis is affirmed in the decision, *R. v. Golub* (1997), 9 C.R. (5th) 98 (Ont. C.A.), in which Mr. Justice Doherty for the Court commencing at para. 18-21 stated:

18 Mr. Harris' reliance on the search warrant cases is misplaced. Both a justice and a arresting officer must assess the reasonableness of the information available to them before acting. It does not follow, however, that information which would not meet the reasonableness standard on an application for a search warrant will also fail to meet that standard in the context of an arrest. In determining whether the reasonableness standard is met, the nature of the power exercised and the context within which it is exercised must be considered. The dynamics at play in an arrest situation are very different than those which operate on an application for a search warrant. Often, the officer's decision to arrest must be made quickly in volatile and rapidly changing situations. Judicial reflection is not a luxury the officer can afford. The officer must make his or her decision based on available information which is often less than exact or complete. The law does not expect the same kind of inquiry of a police officer deciding whether to make an arrest that it demands of a justice faced with an application for a search warrant.

19 The justice asked to issue a search warrant based on information provided by a police source is in a very different position than the police officer who is face to face with the complainant. The justice asked to issue a search warrant based on information provided by a police source cannot assess the reliability of that secondhand information without additional information from the officer pertaining to the reliability of the officer's source. The police officer faced with a complaint from a witness to events has information from a firsthand source and can question that source, if necessary. To the extent that the position of the justice and the arresting officer can be compared at all, the officer acting on a complaint from a witness to the relevant events is in a similar situation to a justice who acts on firsthand information provided by the police officer.

20 The police power to arrest under s. 495 of the Criminal Code was considered in *R. v. Storrey* (1990), 53 C.C.C. (3d) 316 (S.C.C.). Cory J., for the court, said at p. 324:

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.

21 In deciding whether reasonable grounds exist, the officer must conduct the inquiry which the circumstances reasonably permit. The officer must take into account all information available to him and is entitled to disregard only information which he has good reason to believe is unreliable: *R. v. Storrey*, supra, at pp. 423-24; *Chartier v. Quebec (Attorney General)* (1979), 48 C.C.C. (2d) 34 (S.C.C.) at 56; *R. v. Hall* (1995), 39 C.R. (4th) 66 (Ont. C.A.) at 73-75; *R. v. Proulx* (1993), 81 C.C.C. (3d) 48 (Que. C.A.) at 51.

[25] Consequently, the Crown argues that the accused, Mr. Arthur, has had full disclosure of all the materials upon which Corporal Furlan relied in making her decision to arrest him. All of the intercepted e-mails from E-Pistology have been disclosed as well as the affidavit and authorizations in support as reflecting on Mr. Arthur. This is set out in the letter dated August 1, 2012. As a consequence, counsel for the Crown argues that in the context of the present trial, there is no basis to go behind these e-mails to assess the validity of the wiretap affidavits as that is not the issue in these proceedings. Again, the issue, simply put, is whether the corporal had reasonable and probable grounds to make the arrest. Those grounds are to be subjectively viewed and justifiable from an objective point of view. It is required that, as Cory J. stated, "a reasonable person, standing in the shoes of the police officer, would have believed that reasonable and probable grounds existed to make the arrest." Because the validity of an arrest is not reviewed in the same manner as a search warrant or wiretap authorization, Crown counsel distinguishes the cases relied upon by the defence which I have set out above.

Case Law and Legislation

[26] This application is brought pursuant to s. 7 of the Charter which reads:

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

[27] The defence relies upon *R. v. Stinchcombe*. A key principle in this case as articulated by Mr. Justice Sopinka is that the element of surprise is not an appropriate tool for the Crown to use in a criminal prosecution. Any fruits of the investigation in possession of the Crown are the property of the public to ensure justice is done. The Crown must disclose all arguably relevant evidence in its possession subject to exceptions of privilege. This duty is ongoing and continues as new information arises.

[28] One of the key decisions following on *Stinchcombe* is that of *R. v. Piaskowski*, 2007 MBQB 68, which was a case involving thousands of pages of written materials. The Court in *Piaskowski* gleaned certain principles concerning disclosure at para. 84. Some of those are:

1. What constitutes disclosure in a particular case depends on the facts of the case and the circumstances of the accused.
2. The Crown's disclosure obligation requires that it must make known to an accused all relevant materials in its possession or under its control.

3. The Crown has an obligation and a reviewable discretion to determine what is relevant, and counsel for the Crown may rely on the advice and opinion of investigators in determining relevancy in the case where materials are voluminous.

4. The Crown must disclose materials in a manner which the accused can reasonably access.

[29] It is of note that the "kitchen sink" approach to disclosure is to be avoided, as is stressed by the Court in *Stinchcombe*; material which is clearly irrelevant need not be disclosed. There must be a reasonable possibility that the material may assist the accused in any aspect of the exercise of the right to make full answer and defence. For that, I rely upon the *Chaplin* decision. Thus, the Crown's disclosure obligations are engaged at a low threshold as confirmed in *Dixon*.

[30] A useful approach to separating what material is relevant from irrelevant is set out in *Egger*, the 1993 decision of the Supreme Court of Canada in which the Court held at paras. 18-20:

The Crown's disclosure obligation is subject to a discretion, the burden of justifying the exercise of which lies on the Crown, to withhold information which is clearly irrelevant or the nondisclosure of which is required by the rules of privilege, or to delay the disclosure of information out of the necessity to protect witnesses or complete an investigation: [see] *Stinchcombe*

The trial judge reviewing the Crown's disclosure decisions, and by backward extension the Crown itself in exercising its discretion,

should be guided by the general principle that information ought not to be withheld if there is a reasonable possibility that the withholding of information will impair the right of the accused to make full answer and defence, unless the non-disclosure is justified by the law of privilege.

[*Stinchcombe*, at p. 340.]

One measure of the relevance of information in the Crown's hands is its usefulness to the defence: if it is of some use, it is relevant and should be disclosed - - *Stinchcombe* at 345. This requires a determination by the reviewing judge that production of the information can reasonably be used by the accused either in meeting the case for the Crown, advancing a defence or otherwise in making a decision which may affect the conduct of the defence such as, for example, whether to call evidence.

Finally, as to the timing of disclosure, the Court held in *Stinchcombe* that initial disclosure should occur before the accused is called upon to elect the mode of trial or to plead

[31] At the time *Stinchcombe* was decided, there were, of course, other factors left undecided. Some of those were clarified in the subsequent decision of the Supreme Court of Canada in *R v. McNeil*, 2009 SCC 3. Relating to documents that are not in possession of the Crown, in the unanimous reasons of the Court, Madam Justice Charron stressed that documents in the possession of the police force investigating the accused ought to be considered first party records and disclosed in accordance with the principles of *Stinchcombe*.

- [32] More importantly for the purposes of this application, McNeil clarified that implicit in the Crown's duty to disclose its file is not an absence of privacy interests of others; rather, that there are two assumptions upon which the disclosure rests. The material is clearly relevant, otherwise why would the Crown have it, reasoned the Court, and secondly, the material will likely comprise the case against the accused. Here, the Crown has the materials in matters which form the basis of other investigations that are now before courts and proceeding concurrently to this. As to the materials' use in the case, here the Court was told they will not be used in prosecution.
- [33] In the case of *R. v. Maybee*, 2002 BCPC 385, a similar argument was advanced to that here, that disclosure of other investigations was needed as those formed arguably part of a larger investigation implicating the accused and, the evidence before the Court flows out of that larger investigation. The Crown in that case argued *inter alia* that the disclosure was irrelevant - and part of a separate investigation. Arnold P.C.J., now Arnold J., turned to the argument that was sought to be advanced in that case relating to opening the packet, and noted the standing of the party to advance that argument. However, given that the argument to be made faced considerable obstacles, disclosure was not ordered at that time.

Application of the Legal Principles to the Facts at Bar

- [34] In the case at bar, as noted, defence counsel seeks all of the investigatory files of E-Pistology and E-Poem. It is noted in the Crown materials that this comprises some 14,000 pages of documents and only five items are possibly relevant to this matter, being the surveillance of the unknown male (who the police later determined was Mr. Arthur) and four e-mails of Mr. Arthur. Defence counsel argues that it is possible that the interceptions were improperly obtained and that, as a consequence, this would not stand as a proper basis for the subsequent arrest of Mr. Arthur. The only way this can be learned, it is argued, is by a complete exploration of the investigative file.
- [35] I have been provided with no case authorities in support of the proposition that the analysis of the Court attendant on a claim of unlawful arrest would include scrutiny of all the grounds upon which the arrest is based - including each ground's individual correctness and lawfulness. Instead, I have been provided with case authority, notably *R. v. Nguyen*, 2006 CarswellOnt 6211 from the Ontario Superior Court of Justice in which the Court held that the law does not expect the same kind of scrutiny on an arrest or a search warrant. Mr. Arthur has been provided with the authorizations and affidavits in support, in any event. This is not a case like *Bottineau* where the Court held further disclosure was to be ordered in circumstances where the Crown asserted privilege. Further, it was the investigative file of the very case itself in *Bottineau* that was connected with the prosecution. Here, that file, E-Pentatonic, has been disclosed.
- [36] The test for disclosure is, of course, stated by the Supreme Court of Canada in *Stinchcombe* as expanded upon by the Court's decisions in *Egger* and *Chaplin*. As was noted by Mr. Justice Watt in *Bottineau*, disclosure is not coextensive with or limited to what the Crown intends to

tender at trial. Rather, disclosure is the direct result of the need to know the case one has to meet and to make full answer and defence. These obligations, however, are not without limit. Those factors include what use the materials would be to the defence. Here, I am told it is to be in a better position to advance the arguments explained above.

- [37] The Crown argues that even in the best placed position, defence counsel's argument, particularly in respect of the knowns and the issuance of the authorizations, that the lawfulness or otherwise of the ensuing interception is in question is not a pertinent ground for the Court to consider in relation to a wrongful arrest. Rather, the consideration for this Court will be the grounds for belief. The Crown relies for this on the cases noted above - respecting the first series of arguments that were to be based on ss. 8, 9, and 10, but at this stage, defence counsel did not express in detail the exact nature of the arguments to be made. It was, however, clear that the arguments to be made on the materials which resulted from the arrest on Count 2 may be challenging. I note, as did the Court in *Maybee*, that defence counsel may face a challenge in mounting the argument given the existing case law. While only ruling on the disclosure application at this stage, I must look at the materials to the limited extent of seeing if the materials sought will be of use. I find on the submissions before me they will not be.
- [38] It may be that during the course of this trial, a rational basis for the disclosure will emerge. If that turns out to be the case and if Crown's position as to relevance appears incorrect, then defence counsel may reassert the argument for disclosure.

Conclusion

- [39] For the reasons I have outlined, I decline to order further disclosure of the materials in relation to Projects E-Poem and E-Pistology. It is of note that these were determined to be related to Mr. Arthur only after his arrest following the e-mail which occurred on May 4, 2009, in which Corporal Anita Furlan had determined that activity was to occur and, consequently, an arrest was to be effected on that date of any individual who was to appear in accordance with what was, in her determination, the prearranging of a drug transaction. Mr. Arthur was arrested in respect of Count 1 on April 9, 2009, pursuant to the surveillance on E-Pentatonic. I note that all of that file has been disclosed with regard to this project and is not the subject matter of this application.
- [40] I determine that in the circumstances, all relevant materials have been disclosed at this stage. Key materials in this case are the authorizations and affidavits in support as well as the e-mails and surveillance notes relating to Mr. Arthur in the other files. Crown counsel submitted that an extensive search was made through the materials, at times with the assistance of officers, in order to assess whether there was any other material that was of likely relevance, and there was none.
- [41] Accordingly, I am dismissing this application.

[42] Of course, the defence has leave to renew this application should anything further arise on argument of the evidence on this issue after this hearing.

"Maisonville J."

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