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USA v. Fraser

2015 BCSC 604

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2015 BCSC 604 USA v. Fraser

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

USA v. Fraser,

2015 BCSC 604

Date: 20150410

Docket: 26331

Registry: Vancouver

In the Matter of the Extradition Act, S.C. 1999, c. 18, as amended

**And in the Matter of the Attorney General on behalf of the United States of America
and**

Shane Donald Fraser, Todd Ian Ferguson, Daniel James Joinson, Darrell Joseph Romano, Robert Frank Romano, Ivan Djuracic, Aaron Randolph Anderson and Jamie Daniel Nenasheff

Before: The Honourable Madam Justice Watchuk

Oral Reasons for Judgment

Re: Application for Committal

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I. INTRODUCTION

- [1] The United States is seeking the extradition of eight persons for prosecution for drug trafficking offences: Shane Donald Fraser ("Fraser"), Todd Ian Ferguson ("Ferguson"), Daniel James Joinson ("Joinson"), Darrell Joseph Romano ("D. Romano"), Robert Frank Romano ("R. Romano"), Ivan Djuracic ("Djuracic"), Aaron Randolph Anderson ("Anderson") and Jamie Daniel Nenasheff ("Nenasheff"), collectively the "Persons Sought".
- [2] Reasons were given for five of the Persons Sought (D. Romano, R. Romano, Djuracic, Anderson and Nenasheff) on April 8, 2015, and on Friday April 10, 2015 for the other three Persons Sought (Fraser, Ferguson and Joinson). These written Reasons relate to all eight Persons Sought.

- [3] Further to an extradition request, the Minister of Justice issued an Authority to Proceed ("ATP") dated August 2, 2012 under section 15 of the Extradition Act, S.C. 1999, c. 18 (the "Act") for each of the Persons Sought. Those ATPs were subsequently replaced with ATPs dated February 13, 2014, as permitted by section 23 of the Act. The current ATPs authorize the Attorney General of Canada (the "AGC") to seek an order of committal for the corresponding Canadian offences of trafficking in a controlled substance and conspiracy to traffic in a controlled substance.
- [4] The AGC now applies for the committal into custody of the Persons Sought pursuant to section 29(1)(a) of the Act. The AGC relies on evidence contained in a Record of the Case for Prosecution certified on August 29, 2011 (the "ROC"). The AGC also relies on a Supplemental Record of the Case for the Prosecution dated June 25, 2012 (the "SROC"), a Second Supplemental Record of the Case dated November 26, 2013 (the "SSROC"), a Third Supplemental Record of the Case dated June 27, 2014 (the "TSROC") and a Fourth Supplemental Record of the Case dated February 6, 2015 (the "4SROC") (collectively referred to as the "Record"). The other evidence includes admissions as to identification for D. Romano, R. Romano, Anderson, Djuracic and Nenasheff and evidence regarding identification of Fraser, Ferguson, and Joinson.
- [5] The evidence in the Record summarizes police surveillance, witness statements, intercepted communications, documents and other information arising from an investigation into an organization which is alleged to have transported hundreds of pounds of marihuana from British Columbia, Canada into the United States. The AGC says that the evidence demonstrates that the persons sought participated in this organization through modifying logs and packing marihuana into logs hollowed out for the purpose of concealing the drugs. Those logs were then transported across the Canada-U.S. border and delivered to Southern California where the logs and drugs were seized.
- [6] The issue on this committal hearing is whether the admissible evidence could be used by a reasonable, properly instructed jury to find that each of the Persons Sought conspired to traffic marihuana and also trafficked in marihuana. Is the evidence sufficient to commit each of the persons sought for extradition on both offences set out in the ATP?

II. THE EXTRADITION COMMITTAL HEARING

- [7] Section 24(1) of the Act requires the court to hold an extradition hearing upon the filing of an ATP. In this case, the ATP of each of the Persons Sought states that the person is sought for prosecution for conduct corresponding to the following Canadian offences:
- (a) conspiracy to traffic in marihuana, contrary to s. 465 of the Criminal Code, R.S.C. 1985, c. C-46 and s. 5 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [the CDSA]; and
 - (b) trafficking in marihuana contrary to s. 5 of the CDSA.

- [8] Section 3(1) of the Act sets out a conduct-based test for whether a person may be extradited to a foreign state. Extradition is permitted when the conduct underlying the foreign offence, if it occurred in Canada, would constitute an offence in Canadian law, however named or characterized, punishable by imprisonment for a maximum period of two years or more. This is known as the "double criminality" requirement: *Canada (Justice) v. Fischbacher*, 2009 SCC 46, at para. 4.
- [9] The foreign component of double criminality is assessed by the Minister prior to issuing an ATP: *Fischbacher* at para. 30. The domestic component is assessed by a judge at an extradition hearing as part of the process which determines whether committal for extradition should be ordered (at para. 35).

A. The Test for Committal

- [10] The test for committal for extradition of a person sought for prosecution is set out in s. 29(1) (a) of the Act as follows:
- 29.(1) A judge shall order the committal of the person into custody to await surrender if
- (a) in the case of a person sought for prosecution, there is evidence admissible under this Act of conduct that, had it occurred in Canada, would justify committal for trial in Canada on the offence set out in the authority to proceed and the judge is satisfied that the person is the person sought by the extradition partner;
- [11] Committal shall be ordered where there is admissible evidence that shows that the person before the court engaged in conduct that would justify committal for trial in Canada for the offence set out in the ATP if that conduct had occurred in Canada and where the identification requirements are met.
- [12] The Supreme Court of Canada in *United States of America v. Ferras*, 2006 SCC 33 stated that s. 29(1) requires a judge to determine two matters: what evidence is admissible under the Act and whether the admissible evidence is sufficient to justify committal (at para. 36). The enquiry into sufficiency includes the availability and reliability of the evidence (at paras. 54 and 57).

B. Admissible Evidence

- [13] The admissibility of evidence at the extradition hearing is governed by s. 32-37 of the Act.
- [14] Under s. 32(1)(a), a certified record of the case which summarizes the evidence available in the requesting state will be admissible if it complies with s. 33 of the Act, even if it would not otherwise be admissible under Canadian law.
- [15] Section 33 provides that the record of the case must meet certain criteria in order to be admitted. This provision requires that the requesting state provide a document summarizing the evidence that is available to the requesting state for the prosecution (s. 33(1)(a)). It also requires that the requesting state certify that the evidence is available for

trial, is sufficient under the law of the requesting state to justify prosecution, and was gathered according to the law of the requesting state (s. 33(3)(a)). For the purposes of s. 33 a record of the case includes any supplement added to it (s. 33(5)).

- [16] Where evidence has been certified by the requesting state, that evidence is presumed to be available for trial and to be presumptively reliable. Unless rebutted, these presumptions will stand: Ferras at paras. 58 and 66.
- [17] In this case, the Record complies with the Act's requirements for certification. The ROC, SROC, SSROC, TSROC and 4SROC each contain the required certification, from Heiko P. Coppola, Assistant United States Attorney. The content of the Record is therefore admissible as evidence even if it would not otherwise be admissible under Canadian law, subject to s. 32(2) which restricts the admissibility of Canadian-gathered evidence. Accordingly, this evidence is presumed to be available and reliable.
- [18] Stricter rules apply to Canadian-gathered evidence than foreign-gathered evidence. Under s. 32(2) of the Act, where evidence summarized in a record of the case is gathered in Canada, that evidence must conform to the rules of Canadian evidence to be admitted. This issue was canvassed in the previous Rulings related to these proceedings, most notably the Wiretap Disclosure Reasons, indexed at 2015 BCSC 159.
- [19] In *United States of America v. Anekwu*, 2009 SCC 41, the Supreme Court of Canada unanimously held that s. 32(2) is concerned with the substance of Canadian-gathered evidence, rather than form. In that case, an extradition partner was permitted to tender Canadian-gathered evidence in summary hearsay form within the record of the case because in substance it would be admissible in a Canadian court (at paras. 26, 30 and 32).
- [20] In this case, issues regarding disclosure and admissibility of Canadian-gathered evidence were dealt with in Rulings made earlier in the course of these proceedings: the "June Disclosure Reasons" indexed at 2014 BCSC 1132; the "March Disclosure Reasons" indexed at 2015 BCSC 338; and the "Wiretap Disclosure Reasons". The Ruling regarding the constitutional challenge to s. 5 of the Act is indexed at 2014 BCSC 1641, and the "Section 8 Ruling" regarding an application concerning s. 8 of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (the "Charter") is indexed at 2015 BCSC 411. In the Wiretap Disclosure Reasons it was held that the Record provides sufficient details about the Canadian-gathered evidence to allow its admission. In the earlier Rulings, the applications involving other Charter related allegations were dismissed.
- [21] The committal hearings therefore proceeded on the evidence adduced by the AGC with the exception of some evidence in the ROC which was deleted or disavowed. For the five persons sought, no reliance was placed on the wiretap evidence or the statements of D. Romano and Djuracic. Conclusory statements such as that found in para. 168 of the ROC regarding the U-Haul trailer being "loaded with marihuana" were disavowed. Sentences which commenced with: "The importance of these observations", such as paras. 157, 163 and 187 were clarified

to be interpretations, rather than evidence.

1. The Admissibility of the Intercepted Communications

- [22] The interception of communications is unlawful unless judicially authorized: Criminal Code, s. 184(2)(b). Paragraph 31 of the ROC contains expected testimony of Corporal Paul which states that all intercepted calls discussed were intercepted pursuant to court authorizations. The Record provides details of those authorizations including the name of the granting judge, the authorization number, the name of the targets, the intercepted phone numbers, the subscriber and user of the numbers, and the period for which the authorization was valid. The descriptions of the intercepted calls include the date, the telephone numbers involved, the speakers if identified and the content. A comparison of the authorization details with the specific intercepted calls demonstrates that the calls were intercepted under valid authorizations. This establishes that the evidence was lawfully gathered in Canada.
- [23] The intercepted communications were determined to be admissible in these proceedings. In the Section 8 Ruling, the court dismissed an application to exclude evidence acquired by wiretapping. The court found that there was no air of reality to Fraser, Ferguson and Joinson's claims that their Charter rights had been violated. As a result, those communications are admissible as evidence in this committal decision.

2. The Admissibility of Opinion Evidence

- [24] Many of the intercepted communications in the ROC contain words or phrases which are interpreted as to their coded meaning by RCMP officers. Those interpretations are included in the ROC as expert evidence which will be used to establish the offences.
- [25] In the absence of any other exclusionary rule, expert opinion evidence is admissible if it is relevant, necessary to assist the trier of fact, and given by a properly qualified expert: *R. v. Mohan*, [1994] 2 S.C.R. 9 at 20. The opinion should provide information that is likely to be outside the knowledge and experience of the judge (at 23). To qualify as an expert, the witness must be shown to have special knowledge acquired through study or experience in respect of the matters on which he will be testifying (at 25).
- [26] In extradition cases, if an expert's opinion evidence was acquired in Canada then s. 32(2) of the Act requires that evidence to comply with the Canadian rules of evidence, including the requirements for qualifying an expert. However, since evidence in a record of the case is in summary form only and because that evidence is presumed to be admissible if the record is certified, courts have held that experts do not need to prove their qualifications in detail. In *United States of America v. Yu*, 2011 ONSC 2777, the extradition judge admitted two detectives' opinion evidence even though the record did not include their curriculum vitae or set out their prior experience in minute detail. It was sufficient that the record provided a general description of the expert's experience, qualifications and familiarity with the investigation (at paras. 85-87).

- [27] In this case, the ROC describes the experience of the officers who will testify as to the meaning of coded language within the intercepted calls in paras. 6 to 9. These officers are experienced in drug investigations and were all assigned to the monitor room in this investigation during which over 200,000 intercepts from 14 identified targets were listened to over a seven-month period. Their personal experience in drug investigations and undercover work along with information shared from other RCMP members and informants within the drug community enabled these officers to become familiar with the terminology used within the drug trafficking organizations when conducting business. This information establishes that the officers are qualified to give an opinion on the meaning of words and phrases used in the intercepted communications.
- [28] The opinion evidence is clearly relevant to the matters before this court as it addresses the content of the conversations between the alleged co-conspirators and their connection to trafficking in marihuana. It is necessary evidence in these proceedings since a judge could not interpret the coded conversations without the particular knowledge possessed by these experts, or would have unreasonable difficulty doing so. Again, these experts only acquired their knowledge through experience in drug investigations and their review of the huge volumes of intercepted calls in this case, and this knowledge is outside the experience of a typical judge.
- [29] Furthermore, the information provided in the ROC is sufficient to lay the foundation for the opinion evidence set out in the ROC. The opinion evidence regarding the meaning of the intercepted communications should therefore be admitted.
- [30] In summary, the ROC, SROC, SSROC, TSROC and 4SROC are properly certified under s. 33 and comply with s. 32(2) with respect to Canadian-gathered evidence. The content of these documents is therefore admissible as evidence at this extradition hearing subject to Ferguson's argument regarding the reliability of the identification evidence.

C. The Evidence Required for Committal

- [31] The test for committal is set out in s. 29(1) of the Act as stated above. Committal shall be ordered if there is any evidence upon which a reasonable jury properly instructed could return a verdict of guilty: Ferras at para. 9.
- [32] The focus of the extradition judge is on the sufficiency of the evidence in the record. As discussed above, the foreign law component of the double criminality requirement is conducted by the Minister, and the judge's review is limited to the domestic aspects of extradition. If the judge concludes that the impugned conduct would amount to a criminal offence in Canadian law and that judge is satisfied that the admissible evidence could reasonably support a conviction, the person sought must be committed for extradition: Fischbacher at paras. 35-36. As noted by the Court of Appeal in *United States of America v. Graham*, 2007 BCCA 345, this inquiry does not merely ask whether there is some evidence on every element of the alleged offences. Instead, the extradition judge must assess the

evidence as a whole to determine whether the reliable and available evidence is sufficient for committal (at paras. 21-23, and 32).

- [33] Of course, this determination must be the result of a fair hearing that complies with the Charter rights of the persons sought for execution. Accordingly, the extradition judge must also ensure that the hearing itself is conducted in accordance with the principles of fundamental justice: *United States of America v. Cobb*, 2001 SCC 9 at paras. 24 and 34.

1. Reliability of the Evidence

- [34] As noted above, certification results in a rebuttable presumption that the evidence in the record of the case has threshold reliability. However, an extradition judge has the discretion to disregard evidence where the presumption of reliability is successfully impeached. The person sought may challenge the reliability of the certified evidence by tendering his own evidence or making arguments on whether the certified evidence could be believed by a reasonable jury: *Ferras* at paras. 50 and 52-54.
- [35] In assessing reliability of the evidence in the record of the case, the issue is threshold reliability, not ultimate reliability. As defined in *Ferras*, threshold reliability is met if the evidence tendered possesses sufficient indicia of reliability to make it worth consideration by the extradition judge in light of all the evidence presented at the hearing (at para. 53).
- [36] It is not necessary for the extradition judge to compare or assess each piece of evidence against the other evidence to determine whether threshold reliability is met. This is because the comparing and weighing of the evidence and alternative interpretations of the facts are beyond the limited role of the extradition judge: *United States of America v. Chao*, 2004 BCCA 156 at para. 13; and *United States v. Bennett*, 2014 BCCA 145 at paras. 23-26. However, evidence in the record can still be proven to be unreliable or inaccurate without requiring the judge to compare or make assessments of other evidence: *Bennett* at para. 25.
- [37] Evidence in a certified record of the case can be rejected because it is manifestly unreliable. Evidence is manifestly unreliable if it would be dangerous or unsafe to rest a verdict on that evidence: *Ferras* at paras. 40, 54, and 65. However, since there is a presumption that the evidence in a certified record is reliable, that evidence will be admissible unless the court is satisfied that the concerns about that evidence's reliability warrants the complete rejection of that evidence: *United States of America v. Orphanou*, 2011 ONCA 612 at para. 35; and *United States of America v. Michaelov*, 2010 ONCA 819 at para. 47, leave to appeal ref'd [2011] S.C.C.A. No. 37.
- [38] Extradition judges do not assess the credibility and ultimate reliability of witnesses, nor choose between competing inferences, as those are issues for the trier of fact to determine at trial: *Graham* at para. 41; and *Bennett* at para. 24.

[39] The fact that some evidence in the record of the case comes from alleged co-conspirators does not displace the presumption that the record of the case is reliable: *Scarpitti v. United States of America*, 2007 BCCA 498 at paras. 39-41.

2. Availability of the Evidence

[40] The courts have held that the term "available for trial", as it is used in the Act, is to be accorded a broad interpretation. The question is whether there is a *prima facie* case that evidence exists upon which the person may be tried: *Ferras* at para. 55. If evidence is certified in the record of the case, there is also a rebuttable presumption that the evidence will be available for use in prosecution by the requesting state (at paras. 57-58).

[41] In certifying the availability of the evidence for trial, the requesting state is not required to prove that every source of evidence will attend as a witness at a future trial. The evidence must be available for trial, but the manner in which that evidence is tendered at trial is not a requirement of availability: *United States v. Freimuth*, 2004 BCSC 154 at para. 37-39; and *United States of America v. Yang* (2001), 56 O.R. (3d) 52 (C.A.) at paras. 58 and 67.

[42] In a recent decision of this court, *United States of America v. Thornett*, 2013 BCSC 1470, Mr. Justice Schultes held at para. 34:

...much like the ultimate attribution of weight to various pieces of evidence, the ultimate adequacy of the means by which the prosecution seeks to present its evidence is a matter for trial. As the passages [paras. 57-58] from *Ferras* make clear, an assertion of availability at this stage means no more than the prosecution represents that the evidence described in the Record is capable of being adduced.

[43] In short, the evidence must be available at trial, but the method and procedure of adducing that evidence is a matter for the requesting state. The person sought can challenge this by arguing that the evidence will be unavailable, but not by stating that it will not be available in a specific form or making bald assertions that the presumption of availability should not apply.

[44] In this case, the certification gives rise to a presumption of availability.

3. Reviewing the Evidence for Sufficiency

[45] This is the major issue in this case.

[46] In addition to the requirement of availability and the consideration of reliability, the extradition judge must determine the overall sufficiency of the evidence. In *Ferras*, the Supreme Court of Canada confirmed that an extradition judge may engage in a limited weighing of evidence to determine whether the evidence is sufficient for committal to trial. The ultimate assessment of the evidence's weight is left for the trial, where guilt or innocence is determined. Instead, the extradition judge looks at the whole of the evidence presented and determines whether it discloses a case on which a reasonable jury, properly instructed, could convict (at paras. 46 and 54).

[47] In *Graham*, the Court of Appeal held that assessing the sufficiency of the evidence demands a holistic appraisal of the case (at para. 29). Mr. Justice Donald engaged in an analysis similar to that applied by Arbour J. in *R. v. Biniaris*, 2000 SCC 15 at paras. 36-40, and stated that courts should examine the case through "the lens of judicial experience" to determine whether the evidence could be used by a reasonable, properly instructed jury to reach a verdict of guilty (at para. 31). Mr. Justice Donald summarized the impact of *Ferras* at para. 32 as follows:

In summary, *Ferras* stands for the proposition that extradition judges now have the discretion to disregard evidence shown to be unreliable or unavailable and in respect of the evidence that remains, to determine by an assessment of the evidence, including a limited weighing of the evidence, whether it is sufficient for a properly instructed jury acting reasonably to reach a verdict of guilty in Canada.

[48] In short, the judge must be satisfied that the evidence is sufficient to justify committal. First, the judge must be satisfied that the evidence is admissible and that it possesses the required threshold reliability. Then, the judge must review all of the evidence to ensure that it discloses a case on which a properly instructed jury could convict. This requires evidence on each element of the Canadian corresponding offences: *Ferras* at para. 38.

[49] Where evidence is direct, the extradition judge simply assesses whether there is admissible evidence that addresses each required element and whether the case as a whole is sufficient. However, where evidence is circumstantial, inferences may be required. In this case, much of the evidence is circumstantial.

[50] When determining whether there is sufficient evidence to commit an accused for trial in domestic criminal proceedings, the use of inferences was set out by the Supreme Court of Canada in *R. v. Arcuri*, 2001 SCC 54. If the Crown has not presented direct evidence as to every element of the offence, the preliminary inquiry judge must engage in a limited weighing of the evidence to determine whether the remaining elements of the offence that are not proven by direct evidence "may reasonably be inferred from the circumstantial evidence" (at para. 23). However, the judge does not herself draw inferences nor assess credibility. The judge only asks whether the circumstantial evidence, if believed, could reasonably support an inference of guilt by a reasonable jury that was properly instructed (at paras. 23, and 29-34).

[51] In *Ferras*, the Court applied *Arcuri* to the test for committal in extradition proceedings. When circumstantial evidence is relied upon in committal proceedings, a judge may "engage in limited weighing of circumstantial evidence to ensure that inferences from the evidence are reasonably supportable": *Ferras* at para. 39. Again, the extradition judge does not herself draw inferences, but merely assesses whether, considering the evidence as a whole, the inferences that would be necessary for conviction could reasonably be drawn from that evidence if the Crown's evidence is believed: *Arcuri* at paras. 30, and 32.

[52] In *United States of America v. Hislop*, 2009 BCCA 94 a central issue was whether the extradition judge had drawn unsupportable inferences from the evidence in the record of the case. The person sought for extradition argued that his banking activity which was found to support an inference of fraud could also support an inference of innocent activity. The Court of Appeal dismissed the appeal, and rejected the argument that an extradition judge may choose from amongst competing inferences, since that is a decision for the fact finder at trial. The fact that evidence could support an inference that is consistent with either guilt or innocence is insufficient to justify setting aside committal. This was succinctly summarized in para. 31 of the decision:

The fact that the evidence in the ROC could also support an inference consistent with innocence is insufficient to justify setting aside the committal. The test is whether a jury could convict Mr. Hislop, not whether it would convict him. The choice between competing inferences is ultimately a decision for the fact finder at trial, not for the extradition judge.

[53] This is consistent with the principle that an extradition judge does not weigh the ultimate reliability of the evidence. This was well summarized by Mr. Justice Romilly in *United States v. Haugen*, 2010 BCSC 56. Where circumstantial evidence is reasonably capable of supporting multiple inferences, an extradition judge should not choose which inferences are strongest. So long as the evidence is reasonably capable of supporting inferences that could result in conviction, the person sought for extradition should be committed. The most relevant paragraphs are as follows:

[56] If the circumstantial evidence is reasonably capable of supporting a number of inferences, and one of those inferences supports guilt, the person sought must be committed. In *R. v. Cinous*, 2002 SCC 29, 162 C.C.C. (3d) 129, McLachlin C.J.C. and Bastarache JJ. writing for the majority of the Supreme Court of Canada held that:

91 The expression "limited weighing", adopted by the full Court in *Arcuri*, was intended as a more accurate description of the judge's traditional function. The "limited weighing" description accords just as well with the approach to air of reality as originally set out in *Wu*, *supra*, and followed to this day. In *Arcuri*, McLachlin C.J. quoted at para. 24 from *Metropolitan Railway Co. v. Jackson* (1877), 3 App. Cas. 193 (H.L.), to emphasize the consonance of the limited weighing approach with the traditional distinction between the respective tasks of the judge and jury:

The Judge has a certain duty to discharge, and the jurors have another and a different duty. The Judge has to say whether any facts have been established by evidence from which [the matter in issue] may be reasonably inferred; the jurors have to say whether, from those facts [the matter in issue] ought to be inferred. [...]

This distinction is crucial. The judge does not draw determinate factual inferences, but rather comes to a conclusion about the field of factual inferences that could reasonably be drawn from the evidence.

[Emphasis in original.]

- [57] The argument that Arcuri permits the extradition judge to weigh the sufficiency of the case for committal in cases involving circumstantial evidence, including drawing inferences and choosing from amongst competing inferences, has been rejected: *Turner v. United States of America* (2002), 230 Nfld. & P.E.I.R. 152 (N.L.S.C.); and *United States of America v. Ironside*, 2005 BCSC 1587, at paras. 94-106. The limited function of the extradition judges requires the judge to order committal if the evidence as a whole "creates a web of circumstances that, if unanswered, could lead a properly instructed jury, acting reasonably" to draw an inference of guilt: *Turner*, at para. 77. If the admissible evidence gives rise to competing inferences, these are for the trier of fact to resolve and an extradition judge commits reviewable error in weighing competing inferences or in choosing from amongst them.
- [58] Subsequent to Ferras, in the decision of *Canada (Attorney General) v. Kissel*, [2006] O.J. No. 5019 (S.C.J.), L.A. Beaulieu J. noted that the limited weighing of circumstantial evidence described in *Arcuri* is intended to ensure that inferences from the evidence that go towards every element of the offence are reasonable. A reasonable inference does not have to be the most probable inference: *Kissel* at paras. 80-84. The whole of the evidence must be considered. Further, at para. 85, individual pieces of evidence cannot be examined in isolation devoid of their context and the other evidence.
- [54] The requirement that a judge should not select which competing inference should be drawn from circumstantial evidence is consistent with the rule that an extradition judge should not make a committal decision based on defences that may be available at trial. When assessing the reasonableness of an inference, the extradition judge may only consider evidence that is relevant to the availability and reliability of the prosecution evidence or evidence that committal is unsafe: *United Kingdom v. Aziz*, 2013 BCCA 414 at para. 40. Evidence tendered by the person sought to supplement the record of the case in order to advance innocent explanations, alternate inferences or defences is not relevant to this process (at paras. 35-36). The scope of the relevant evidence was summarized by the Court of Appeal in *Aziz* as follows:
- [40] It follows that the judge was correct to reject Mr. Aziz's application to admit evidence supporting inferences consistent with his innocence. The issue for the judge was whether a properly instructed jury could convict based on reasonable inferences drawn from evidence in the prosecution case. The limited weighing referred to in the case law requires the court to limit its analysis to that universe of evidence. This is subject only to evidence properly admitted under s. 32(1)(c) that directly challenges the availability or reliability of the case rendering any committal unsafe. That is not the situation here.

- [55] Finally, mere weakness of evidence is not grounds for discharge of a person sought for extradition: Graham at para. 31; Orphanou at para. 35. In some cases, this may apply for weak inferences as well. Since an extradition judge should not weigh competing inferences, a weak inference that can be reasonably drawn from the evidence may be sufficiently reliable evidence in some circumstances: Attorney General of Canada (The Republic of France) v. Diab, 2011 ONSC 337, aff'd France v. Diab, 2014 ONCA 374 [Diab].
- [56] In summary, an extradition judge may engage in a limited weighing of the evidence to determine if circumstantial evidence is admissible and if that evidence is reasonably capable of supporting an inference of guilt. However, the extradition judge does not herself draw inferences; the court's role is limited to assessing whether such inferences could be drawn from the relevant, admissible evidence. If the direct and circumstantial evidence together are capable of supporting an inference of guilt then the person sought must be committed for extradition.

D. Identification as Part of the Test for Committal

- [57] Section 29(1)(a) of the Act requires that before ordering the committal of the person sought for prosecution, the extradition judge must be satisfied that the person before the Court is the same person sought by the extradition partner.
- [58] As set out in Danielson v. United States of America, 2008 BCCA 519 at para. 24 by Mr. Justice Chiasson, there are two identification issues that must be addressed by the extradition judge:
- i. On a balance of probabilities, is the person before the court the person named in the record of the case?
 - ii. Is there prima facie evidence that the person before the court is the person who engaged in the alleged conduct that underlies the extradition request?
- [59] Section 37 of the Act states that the following are evidence that the person before the court is the person requested in the record of the case:
- (a) the fact that the name of the person before the court is similar to the name that is in the documents submitted by the extradition partner; and
 - (b) the fact that the physical characteristics of the person before the court are similar to those evidenced in a photograph, fingerprint or other description of the person.
- [60] This is a low threshold for identification. Name and physical characteristics can individually be evidence of identification, so they do not both need to be present. Mere similarity of name can be sufficient to prove identity: Danielson at paras. 27-28.

[61] The judge can also compare the individual before the court to a photograph of the person sought by the requesting state to determine identification: U.S.A. v. Ranga, 2012 BCCA 81 at paras. 23-24.

E. Corresponding Canadian Offences

[62] The ATPs authorize the AGC to seek an order for the committal of the Persons Sought for conduct which corresponds to the Canadian offences of:

(a) conspiracy to traffic in marihuana, contrary to s. 465 of the Criminal Code and s. 5 of the CDSA; and

(b) trafficking in marihuana contrary to s. 5 of the CDSA.

[63] In order to commit a person for extradition, the evidence must satisfy each of the elements of these two offences.

1. Trafficking

[64] Section 5(1) of the CDSA states:

No person shall traffic in a substance included in Schedule I, II, III or IV or in any substance represented or held out by that person to be such a substance.

[65] Subparagraph 5(3) establishes that trafficking a Schedule II substance is an indictable offence with a potential sentence of life imprisonment. Marihuana is among the controlled substances included in Schedule II of the CDSA.

[66] "Traffic" is defined in s. 2 of the CDSA to include selling, administering, giving, transferring, transporting, sending and delivering a controlled substance. The offence of trafficking is made out when drugs are possessed with the intent or purpose of making them available to others: United States of America v. Boyachek, 2013 BCSC 1636 at para. 37, aff'd 2014 BCCA 437; United States of America v. Trotter, 2013 BCSC 1985 at para. 47.

[67] Subsection 2(1) of the CDSA incorporates the definition of "possession" from subsection 4(3) of the Criminal Code. This Criminal Code provision states:

For the purposes of this Act,

- a) a person has anything in possession when he has it in his personal possession or knowingly
 - i) has it in the actual possession or custody of another person, or
 - ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

- [68] The *actus reus* of trafficking is the moving of a controlled substance from one place to another. Transporting of a controlled substance will amount to trafficking in that substance where the transportation forms part of a transaction involving two or more persons rather than transporting incidental to one's own use: *R. v. Harrington*, [1964] 1 C.C.C. 189 at 195 (B.C.C.A.).
- [69] "Delivery" has been defined as a form of trafficking under the Narcotic Control Act, R.S.C. 1970, c. N-1, the precursor to the CDSA. The term "deliver" contemplates a physical act, without reference to ownership or a change of ownership in the object delivered: *R. v. Taylor* (1974), 17 C.C.C. (2d) 36 at 40 (B.C.C.A.). Further, the act of delivering in and of itself promotes the distribution of the drug in question so as to constitute trafficking within the meaning of s. 2 of the CDSA: *R. v. Larson* (1972), 6 C.C.C. (2d) 145 at 151 (B.C.C.A.) per Branca J.A. These decisions determine that a person can traffic in a prohibited substance without owning the substance that they are transporting and without coercing or pressuring the recipient to accept the substance.
- [70] The *mens rea* of trafficking is knowledge that what is being transported is a controlled substance. This knowledge may be inferred if in the circumstances the person was reckless about what was being transported or wilfully blind to the nature of the substance in question: *R. v. Blondin* (1971), 2 C.C.C. (2d) 118, at 131-132 (B.C.C.A.) per Robertson J.A.
- [71] In summary, to commit a person for the offence of trafficking, the evidence must establish a *prima facie* case that he knowingly transported, gave or delivered marihuana with the intent of making it available to others: *The Attorney General of Canada v. Fester*, 2009 BCSC 1331 at para. 37.
2. Aiding and Abetting the Commission of Offences
- [72] A person may also be deemed to be a party to the offence of trafficking if the evidence shows that he aided or abetted another person in committing it. Section 21 of the Criminal Code states:
- (1) Every one is a party to an offence who
 - (a) actually commits it;
 - (b) does or omits to do anything for the purpose of aiding any person to commit it; or
 - (c) abets any person in committing it.
- [73] A person is a party to the offence of trafficking if he intentionally does anything to assist the principal in committing an offence in circumstances where he knows or is wilfully blind to the fact that his actions will assist with that offence. A person does not need to know all the details of the crime committed. He only needs to be aware of the type of crime to be committed and the circumstances necessary to constitute the crime he is accused of aiding: *R. v. Roach* (2004), 192 C.C.C. (3d) 557 at para. 44 (Ont. C.A.).

[74] Therefore, in the case of trafficking marihuana, a person would need to know or be wilfully blind to the fact that his actions assisted with the transporting, giving or delivering of marihuana with the intent of making it available to others.

3. Conspiracy to Traffic

[75] In order to commit a person for extradition on the offence of conspiracy to traffic a controlled substance, the evidence must be capable of proving that there was a conspiracy to traffic marihuana and that the person sought was a member: Trotter at para. 48.

[76] Subsection 465(1)(c) of the Criminal Code states, in part:

465. (1) Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy:

(...)

(c) every one who conspires with any one to commit an indictable offence not provided for in paragraph (a) or (b) is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable;

The punishment for conspiracy to traffic is therefore the same as trafficking, namely life imprisonment.

[77] The offence of conspiracy was discussed by the Supreme Court of Canada in *R. v. O'Brien*, [1954] S.C.R. 666. Taschereau J. for the majority summarized the core of the offence of conspiracy as a shared intention to do something unlawful or to do something lawful by unlawful means, and a completed agreement to bring that common design into effect (at 668). This offence can be broken down into the following essential elements:

i. an intention to agree;

ii. completion of the agreement; and

iii. a common design to do an unlawful act, or to do a lawful act by unlawful means.

[78] The crime of conspiracy is considered to be complete on the meeting of the minds with regard to the common design to do something unlawful, specifically the commission of an indictable offence. The actus reus is the fact of the agreement: *Papalia v. R.*, [1979] 2 S.C.R. 256 at 276. A conspiracy must involve more than one person, even though all of the conspirators may not be identified: *United States of America v Dynar*, [1997] 2 S.C.R. 462, paras. 86-88.

[79] Membership in a conspiracy can be shown by acts done in furtherance of the scheme. Actual participation in the offence that was planned to be committed is not an essential element of the offence of conspiracy. A person may be found guilty of conspiracy to do an illegal act without having actually committed that act. The Supreme Court of Canada recently described this principle in *R. v. J.F.*, 2013 SCC 12. Acts done in furtherance of the

unlawful common design are "powerful evidence" of the intent and agreement that constitute conspiracy. However, as noted in O'Brien and Papalia, it is the agreement itself that is the actus reus of conspiracy. Moldaver J. for the Court described the necessary participation in a conspiracy as follows:

- [52] In my view, where a person, with knowledge of a conspiracy (which by definition includes knowledge of the unlawful object sought to be attained) does (or omits to do) something for the purpose of furthering the unlawful object, with the knowledge and consent of one or more of the existing conspirators, this provides powerful circumstantial evidence from which membership in the conspiracy can be inferred. To be precise, it would be evidence of an agreement, whether tacit or express, that the unlawful object should be achieved... .
- [53] In so concluding I note that conspiracies are often proved by way of circumstantial evidence. Direct evidence of an agreement tends to be a rarity. However, it is commonplace that membership in a conspiracy may be inferred from evidence of conduct that assists the unlawful object. Justice Rinfret made this basic point in *Paradis v. The King*, some eight decades ago:

Conspiracy, like all other crimes, may be established by inference from the conduct of the parties. No doubt the agreement between them is the gist of the offence, but only in very rare cases will it be possible to prove it by direct evidence.

- [54] Furthermore, it is not necessary that all members of a conspiracy play, or intend to play, equal roles in the ultimate commission of the unlawful object. Indeed, members in a conspiracy need not personally commit, or intend to commit, the offence which each has agreed should be committed. Any degree of assistance in the furtherance of the unlawful object can lead to a finding of membership as long as agreement to a common plan can be inferred and the requisite mental state has been established. [citations omitted]
- [80] In the case of a conspiracy to traffic in a controlled substance, the offence will be made out where the evidence establishes the existence of an agreement between two or more persons to obtain, transport or deliver a substantial quantity of prohibited drugs: *R. v. Sokoloski*, [1977] 2 S.C.R. 523 at 534-535; *Boyachek* at para. 38.
- [81] The mens rea of the offence is some knowledge of the object of the plan to transport and deliver the illegal drugs rather than knowledge of the entirety of what is actually being carried out: *Trotter* at para. 53.
- [82] In summary, to commit a person sought for the offence of conspiracy to traffic, the evidence must establish a prima facie case that there was a conspiracy to traffic marihuana and that the person was a member. It is not necessary to prove that the person sought knew the ultimate destination of the controlled substance, nor the identities of all of the other persons involved in the conspiracy.

III. EVIDENCE

A. Overview

- [83] The AGC submits that the admissible evidence supports the allegations that a conspiracy existed to transport loads of marihuana inside hollowed-out logs. Intercepted communications between Fraser, Ferguson and Joinson indicate that on the weekend of September 16, 2006, the conspirators planned to ship a large load of marihuana. Surveillance on that date shows Anderson, D. Romano, R. Romano, Nenasheff and Djuracic at an industrial site hollowing out logs which were then taken into a building and re-assembled. The reassembled logs were loaded onto a truck which eventually delivered them to California. The logs were under surveillance throughout this time. The logs and the marihuana they had contained were seized by American law enforcement officials after delivery.
- [84] The AGC admits that the act of hollowing out logs is not itself a criminal activity nor is it an indicator of criminal activity. It says that the hollowing out of the logs is only one of the factors to be considered in drawing any inferences from the totality of the evidence.
- [85] The theory of the Requesting State is set out in the Overview at para. 1 of the ROC as follows:

Overview

1. This prosecution arose from an investigation conducted by the United States Federal Bureau of Investigation (hereinafter, "FBI"), the United States Drug Enforcement Administration (hereinafter, "DEA"), United States Immigration and Customs Enforcement (hereinafter, "ICE"), the Royal Canadian Mounted Police (hereinafter "RCMP"), and numerous other state and local law enforcement agencies, which revealed that since in and around March 2006 and continuing until in and around November 2006, a criminal organization with members in Canada and the United States (hereinafter, "the FRASER ORGANIZATION") distributed hundreds of pounds of high-grade marijuana from British Columbia, Canada, into and within the United States. Shane Donald FRASER was in charge of the FRASER ORGANIZATION, assisted by seven other Canadians, including Todd Ian FERGUSON, Daniel James JOINSON, Darrell Joseph ROMANO, Robert Frank ROMANO, Ivan DJURACIC, Aaron Randolph ANDERSON, and Jamie Daniel NENASHEFF. FERGUSON convinced Daniel WACKERMAN, an American citizen, to set up a loghome business in Southern California that eventually became a front for the distribution of marijuana by way of hollowed-out logs. FERGUSON served as WACKERMAN's contact point in Canada and sent Joshua LANE, also an American citizen, to help WACKERMAN process the logs and distribute the marijuana. JOINSON's function within the organization was to gather marijuana and supply it to Darrell ROMANO, who along with Robert ROMANO, DJURACIC, ANDERSON and NENASHEFF, would package the marijuana in hollowed-out logs for shipment to the United States. On at least nine occasions between March 2006 and September 2006, these hollowed-out logs were imported to the United States on log trucks destined for Skookum Distributing, WACKERMAN's log-home business. Investigation revealed that none of the log truck drivers were aware that they were transporting marijuana into the United States. All log shipments

traveled through the Eastern District of California on their way to Southern California. All log truck drivers identified WACKERMAN as the individual to whom they delivered the marijuana-filled logs.

B. Evidence relied upon by the Requesting State and Inferences Sought by the AGC

1. Intercepted Communications

[86] In the course of the investigation, wiretap authorizations were granted on ten dates covering the period from April 13, 2006 to December 8, 2006. The evidence against Fraser, Ferguson and Joinson consists mostly of intercepted communications gathered in Canada pursuant to those authorizations, together with surveillance.

[87] The intercepted communications include coded language which is interpreted in the ROC by police officers with experience in the area of drug investigations. The key points of the evidence, with the inferences sought, is summarized by the AGC as follows.

2. Wiretap and Surveillance Evidence

(a) Prior to September 14, 2006

[88] The intercepted telephone conversations are evidence of communications between Fraser and Ferguson, and Fraser and Joinson. The telephone communications are usually through a mobile device and are often in coded language. Fraser also meets with Ferguson and others in Vernon, and meets with Joinson at the Nanaimo ferry terminal and at a hotel in Chilliwack.

[89] The AGC says that it can be inferred that the nature of the conversations between Fraser and Ferguson show that there is an ongoing plan. Fraser's calls with Joinson support an inference that Fraser is gathering marihuana from a number of people. He has regular suppliers but also others whom he is bringing in to expand his supply. Joinson was waiting to receive marihuana from Fraser to supply others. Delays would result in having to cancel the truck and costs to the shipping company. Fraser refers to outside marihuana crops beginning to come in. They also discuss pricing and amounts.

[90] Calls between Joinson and Ferguson on August 26, 2006 support an inference that Joinson was waiting to receive marihuana on that day from Ferguson who was receiving it from someone else. Joinson had persons waiting to deal with the marihuana when it arrived. On August 27, 2006 Joinson and Ferguson discuss the final count being 765 minus 22 (743 pounds). They also discuss problems with air in the packaging resulting in less marihuana being packed, lowering the total count.

[91] The call on August 28, 2006 between Joinson and Ferguson that "another one bites the dust", following the crossing of the border by a Jade Line trailer driven by Rae Lynne Robertson, supports an inference that a load had been assembled and shipped successfully to the United States.

- [92] At the beginning of September, 2006 the calls from Joinson to Ferguson and between Fraser and Joinson relate, it is inferred, to the preparation of the next load.
- [93] Surveillance shows Joinson and Fraser meeting in early September when Fraser brings Joinson a package. Fraser says that he is finishing the "gathering" for the next load. The interpretation sought is that these actions show that Fraser is gathering the money for the next load of marihuana.
- [94] The intercepted calls between September 11 and 14, 2006 are support for the inference that Joinson and Ferguson were discussing prices and supply for a load of marihuana for shipping. The persons speaking were identified as Joinson and Ferguson through self-identification on calls, familiarity of their voices by police officers, by identification of telephone ownership and usage, and by concurrent surveillance to locations described in calls.
- i. September 14, 2006
- [95] The AGC says that the content of the following calls on September 14, 2006 and subsequent observations confirm that those conversations related to a shipment of marihuana concealed in logs organized by Fraser, Joinson and Ferguson and executed by Joinson, D. Romano, R. Romano, Djuracic, Anderson and Nenasheff in September 2006:
- (a) Joinson asked Ferguson where they were at and Ferguson replied around 8 so far. Joinson wanted to see Ferguson on Sunday. Joinson did not want to sit overnight where they were, because they would not be able to get it done Saturday and Joinson did not want to be exposed.
- (b) Ferguson said he talked to Joinson's buddy and that there were problems with the stuff on Joinson's end. Ferguson said they had to be more careful with the packaging because when they shot the screws in, they make holes. Joinson needed to know ahead of time so they could get ready. If it was around eight that was good and he would be prepared for a couple more. Ferguson said it could be more like twelve. Joinson said they need to make a cut off day and that it was a lot more work to prepare three or four more.
- (c) Ferguson suggested first part Saturday and second part Sunday. Joinson wanted one truck. Ferguson said they could load it on Saturday but just not the last part. Joinson said they would be sitting around all Saturday and Joinson did not like to have things sitting around while they were working. Joinson would like to get it done, to grab it in two hours, tuck it away and it would all be good. Ferguson said the guys were picking up tonight and tomorrow and would be done on Sunday.
- ii. Surveillance on September 15, 2006

[96] The next day, Joinson met with D. Romano. D. Romano then departed alone and traveled to the Armstrong area. He met with a group of men at 1110 Industrial Way, Armstrong, British Columbia (the "Workshop") which was located in a Quonset hut in a rural industrial area. In addition to the Quonset hut it had a portable saw mill, several peeled logs and a flatdeck truck.

iii. September 16, 2006:

[97] In the morning of September 16, 2006 D. Romano, Anderson, Djuracic, Nenasheff and R. Romano were working at the Workshop. Joinson was at the Workshop and left at about 11:37 hours. A bobcat loader was used to move logs out of the Workshop. Investigators could see some of the Persons Sought using chainsaws to square off the logs and to create rectangular compartments.

iv. September 17, 2006:

[98] In the morning Djuracic, R. Romano and D. Romano were in the Workshop. Chainsaw noises could be heard coming from the building.

[99] At approximately 10:30 hours Anderson arrived towing a U-Haul trailer, which was immediately backed into the Workshop. Joinson arrived at the same time in a separate truck.

[100] Joinson and Anderson left the Workshop at 10:43 hours in their vehicles. Anderson was towing the U-Haul trailer.

[101] About half an hour later, Joinson and Anderson returned to the Workshop in Joinson's truck. Joinson left at 11:21 hours.

[102] At 11:40 hours, D. Romano stood outside the Workshop building watching the roadway while R. Romano, Djuracic and Anderson were inside.

[103] At 12:02 hours, an RCMP vehicle, unrelated to this investigation, arrived and the officer spoke to D. Romano for a minute and departed. R. Romano, Djuracic and Anderson left the Workshop and had an animated discussion with D. Romano.

[104] At approximately 16:00 hours, Nenasheff removed 10 logs from the Workshop building. He loaded 6 of them onto an orange flatdeck truck equipped with a crane. The remaining 4 logs were returned to the Workshop. Djuracic and R. Romano left the Workshop driving the orange flatbed truck with the 6 logs on it.

[105] At 16:36 hours the orange Flat-deck truck drove to a property at 9225 Firehall Frontage Road, Salmon Arm, B.C. (the "Firehall Property"). Djuracic was driving. Slits were clearly visible, lengthwise, on some of the logs. Djuracic and R. Romano unloaded the logs from the flat-deck truck onto an empty flat-deck semi trailer registered to Jade Line Holdings Ltd. (the "Semi Trailer") and then returned to the Workshop driving the orange flat-deck truck.

- [106] At 19:02 hours Nenasheff removed four more logs from the Quonset hut and loaded them onto the orange flat-deck truck. At 19:26 hours Djuracic departed in the loaded flat-deck truck.
- [107] At 19:51 hours the flat-deck truck returned to Firehall Property. The four logs were placed onto the Semi Trailer with the other six logs for a total of ten logs.
- [108] Between 19:55 and 20:10 vehicles registered to Anderson, D. Romano and Nenasheff arrived at the Firehall Property. Several males, unidentified due to darkness, worked in the area of the flat-deck semi trailer, then returned to the Workshop before departing.

C. Transportation and Delivery of the Logs

- [109] Continuous surveillance of the flatbed truck containing the 10 logs was maintained between Canadian and American investigators from September 17, 2006, the loading of the 10 logs onto the semi-trailer through to the transportation of the logs on the flatbed truck on September 18, 2006 through to their unloading in Ontario, California on September 22, 2006.
- [110] On September 18, 2006 after the logs left the Firehall property, at 13:46 Ferguson called Joinson and asked what the final count was. Joinson said his guy had screwed up and lost count. Joinson said his guy believed he forgot to write down a number but believed that there was 771 and possibly mistracked 18 on one of the boxes. Ferguson told Joinson that his guy was way off and it was 705.5. Joinson told Ferguson that he would let his guy know. Joinson told Ferguson that he would call back once he had the ten four. Joinson said that he was off Wednesday but would have his phone on him. They agreed to talk later in the afternoon.
- [111] At 15:44 hours Joinson calls Ferguson and says he just received a call and learned that "all is good".
- [112] On September 21, 2006, a man later identified as Dan Wackerman ("Wackerman") arrived at the Warehouse in where the logs had been delivered. He unloaded the logs and placed them inside the compound.
- [113] On September 22, 2006, Wackerman moved the logs into the Warehouse using a forklift. Later, he and Tina Schaffer bought empty cardboard boxes which were put into the Warehouse. At 12:30 hours twenty boxes were loaded into the back of Wackerman's truck and three boxes into the cab. Wackerman's truck was pulled over. Twenty-three (23) boxes of marihuana were located in the truck. Wackerman and Schaefer were arrested. While in the back of the police vehicle Wackerman told Schaefer to contact "Todd" and tell him that the operation was compromised.
- [114] Ten twenty-five foot logs with hollowed-out compartments were found inside the warehouse. Nearby three stacks of suspected marihuana were laid out on the floor. The packaging was clear and the marihuana was visible through the packaging. The hollows in

the logs appeared to have been shaped specifically to fit the rectangular packages of marihuana. A total of 735.2 pounds (including packaging) of marihuana was removed from the Warehouse and Wackerman's truck. Testing confirmed the contents of the packaging to be marihuana.

- [115] Between September 21, 2006 and October 5, 2006 there were interceptions of communications between Ferguson and Joinson allegedly discussing the problem with the shipment to California. In addition, on October 5, 2006 there was a conversation where Fraser says it is too "scary" to go down to the United States at that time.
- [116] On September 21, 2006, Ferguson called Joinson and said that "buddy" was choked at Joinson because Joinson was supposed to meet "him" and didn't. Joinson asked how things went and Ferguson said "ya, it got there". Joinson wanted to make sure it had arrived safe and sound.
- [117] September 25, 2006, there were telephone calls from Ferguson to Joinson. Ferguson asked if Joinson was around, Joinson told him that he was in Kelowna. Ferguson told Joinson that he needed to see him. Joinson asked Ferguson if everything was all right and Ferguson told him that everything was not all right. Ferguson told Joinson that he would tell him when he saw him. Ferguson told Joinson to get rid of his "ghost" and he was to tell all of his other guys to get rid of theirs too. Ferguson told Joinson that he should give his guy the heads-up.
- [118] On September 27, 2006, Joinson receives a phone call from an unknown male who asked Joinson if everyone was fine. Joinson said "so far" but wanted to talk more about it later.

D. Statement and evidence of Dan Wackerman

- [119] Wackerman provided a statement to the police outlining his involvement in the marihuana smuggling operation and what he knew about his Canadian contacts:
- (a) Wackerman described receiving marihuana and money in hollowed-out logs sent from Canada into the United States. Every first and third week of the month he received about 400 pounds of marijuana in hollowed out logs, delivered by Jade Line Holding Transporting Company located in Salmon Arm, B.C.
 - (b) Wackerman had received approximately 7 loads of marihuana in logs since March 2006. Todd Ferguson was his contact in Canada. Wackerman identified a photograph of Ferguson, exhibit "B" to the ROC, later corrected in the 4SROC.
 - (c) He had been introduced to an unknown male by a friend of his, Todd Ferguson. Wackerman had been responsible for the delivery and distribution of around seven loads of marijuana and in one load he had received about \$250,000 cash to be delivered to another party. He had received cash in other loads but not as much. He was to receive \$5,000 per load.

- (d) Wackerman advised that there was about 200 pounds of marihuana at his business, Skookum Distributing. Wackerman signed a "Consent to search" form for a search of the Warehouse.
- (e) Wackerman met Fraser on at least one occasion. Wackerman identified the photograph marked as Exhibit "A" to the ROC as being Fraser.

[120] An analysis of Wackerman's phone showed relevant calls:

- (a) September 19, 2006 at 23:59 hours call to phone used by Ferguson
- (b) September 20, 2006 at 09:20, and 0922 hours calls to Jade Line Holdings Ltd.;
- (c) September 20, 2006 at 12:46, and 12:50 hours calls to phone used by Ferguson;
- (d) September 20, 2006 3 further calls to Jade Line Holdings Ltd.; and
- (e) September 21, 2006 a call to Jade Line Holdings Ltd.

E. Summaries of the Evidence of the Requesting State for D. Romano, R. Romano, Djuracic, Anderson, and Nenasheff

[121] It is important to delineate the evidence regarding the actions of each of the five persons sought. The Requesting State provided the following summaries:

1. Darrell Joseph Romano Summary of Evidence

This following evidence summary has been abbreviated to focus on the activities of Darrell Joseph Romano.

DARRELL ROMANO'S VEHICLE

On February 21, 2007, Constable Monpetit determined that British Columbia license plate "3793HH" was assigned to a blue 1995 Ford pick-up truck ("Vehicle") registered to Darrell Joseph Romano of 3069 Quail Crescent, Kelowna, BC. (ROC, pp. 7-8, para. 25)

This Vehicle was seen during several days of surveillance at or near the Quonset building located at 1110 Industrial Way, Armstrong, BC. (ROC, pp. 7-8, para. 25)

SURVEILLANCE EVIDENCE

The following is a summary of the RCMP surveillance evidence contained in the Record of the Case at pages 35 to 41.

September 15, 2006 - Surveillance of Darrell Romano with Co-accused

• 3:10 pm: Darrell Romano meets Joinson in the parking lot of the Best Western Vernon Lodge. Darrell Romano departs alone in his Vehicle and heads towards Armstrong, BC. (ROC p. 35, para. 153 - Pelegrin)

- 4:05 pm: Darrell Romano meets with a group of unknown males at 1110 Industrial Way, Armstrong, BC. (ROC, p. 35, para. 154 - Thorne)
- 5:06 pm: Darrell Romano and the group of unknown males leave the Industrial Way site and go to the Fraternal Order of Eagles building (an eating establishment) in Vernon, BC, where they stay for approximately one hour. (ROC, p. 35, para. 155 - Thorne)
- 8:15 pm: Darrell Romano travels to his residence located at 3069 Quail Crescent, Kelowna, BC. (ROC, pp. 35-36, para. 157 - McKenzie)

September 16, 2006 - Surveillance of Quonset Building

- 9:23 am: Darrell Romano leaves his Kelowna residence driving his Vehicle. (ROC p. 36, para. 158 - McKenzie)
- 10:31 am: Darrell Romano arrives at 1110 Industrial Way, Armstrong, BC, where Djuracic, Nenasheff, Anderson, and Robert Romano are working at the Quonset building. (ROC, p. 36, para. 159 - Woodworth).
- During the day, Nenasheff used a Bobcat loader to move logs into and out of the Quonset building. Each log was squared on one side using a portable sawmill. Darrell Romano was in close proximity to a portable sawmill that was being used to square one side of the logs. The remaining round sides of the logs were then squared and these round sides and the squared logs were taken further inside the Quonset building. Nenasheff and Anderson then used a chainsaw to cut away portions of squared logs to create hollow rectangular compartments in them. (ROC p.36, para. 161 - Svendsen)
- 6:30 pm - 7:00 pm: Darrell Romano, Nenasheff, Anderson, Djuracic, and Robert Romano depart the Quonset building site. Darrell Romano travels back to his residence in Kelowna. (ROC, p. 36, para. 162 - the surveillance team)
- Darrell Romano, Anderson, Robert Romano, Djuracic, and Nenasheff were the only persons seen working in the Quonset building on September 16, 2006. (SROC, para. 2).

September 17, 2006 - Surveillance of Quonset Building

- Darrell Romano, Anderson, Robert Romano, Djuracic, and Nenasheff were the only persons seen working in the Quonset building on September 17, 2006. (SROC, para. 2)
- 10:11 am: Djuracic and Robert Romano are already working inside the Quonset building. Chainsaw noises are heard coming from the Quonset building throughout the day. Darrell Romano arrives at the Quonset building site in his Vehicle. (ROC, p. 38, para. 168 - Pelegrin)
- o 10:30 am - 10:34 am: U-Haul trailer arrives and is backed into the Quonset building. Joinson arrives at the same time, driving a pick-up truck. (ROC, p.38, para. 169 - Pelegrin)

- o 10:43 am: Anderson (with U-Haul) and Joinson leave the Quonset building site. (ROC, p.38, para. 170 - Pelegrin)
- 11:40 am: Darrell Romano stands outside the Quonset building watching the roadway, while Robert Romano, Djuracic, and Anderson remain inside the Quonset building. (ROC. p. 39, para. 174 - Pelegrin)
- 12:02 pm: An RCMP vehicle, unrelated to this investigation, arrives. An RCMP officer speaks to Darrell Romano for a minute, then departs. (ROC, p. 39, para. 175 - Pelegrin)
- 12:07 pm: Robert Romano, Djuracic, and Anderson exit the Quonset building and have an animated discussion with Darrell Romano. (ROC, p. 39, para. 176 - Pelegrin)
- 1:25 pm: Darrell Romano enters the Quonset building with Robert Romano, Djuracic, Nenasheff, and Anderson. (ROC p. 39, para. 178 - Pelegrin)
- o 3:32 pm - 4:08 pm: Nenasheff removes ten logs from the Quonset building, loads six of them onto an orange flat-deck truck, and returns the remaining four to the Quonset building. Djuracic and Robert Romano then drive the orange flat-deck truck with the six logs on it to 9225 Firehall Frontage Road, Salmon Arm. Lengthwise slits are clearly visible on some of the logs. Djuracic and Robert Romano unload the logs from the orange flat-deck truck onto an empty flat-deck semi-trailer. (ROC, p. 39, paras. 179, 180, 182 - Pelegrin and Woodworth)
- 4:34 pm: Darrell Romano is inside the Quonset building with Nenasheff and Anderson. Anderson is operating a chainsaw. Hammering noises are heard coming from the Quonset building. (ROC, p. 39, para. 181 - Pelegrin)
- o 7:02 pm: Nenasheff removes four additional logs from the Quonset building and loads them onto the orange flat-deck truck. Djuracic drives the loaded orange flat-deck truck to 9225 Firehall Frontage Road, where the four logs are transferred to the same flat-deck semi-trailer holding the six logs. Surveillance is maintained throughout the night on the ten logs. (ROC, p. 39, paras. 184, 185, and 187 - Pelegrin and Woodworth)
- 7:55 pm - 8:10 pm: Darrell Romano's Vehicle arrives at 9225 Firehall Frontage Road, Salmon Arm, BC, along with Anderson's and Nenasheff's pick-up trucks. Several males (unidentifiable because of darkness), work in the area of the flat-deck semi-trailer, then leave about one hour later. (ROC, p. 40, para. 186)

September 18, 2006

- 6:07 am - 7:07 am: Darrell Romano's Vehicle arrives at 9225 Firehall Frontage Road, Salmon Arm, BC, along with the orange flat-deck truck, and Anderson's and Nenasheff's pick-up trucks. (ROC, p. 40, para. 188 - Woodworth). By 8:13 a.m., all vehicles, except Darrell Romano's, had departed this location. (ROC, p. 41, para. 190 - Svendsen)

IDENTIFICATION EVIDENCE

Photograph Identification

1. On February 2, 2007, pursuant to a production order, ICBC produced to RCMP Constable Helgeson a BC Driver's Licence ("BCDL") photograph of Darrell Romano. A copy of that photograph is attached as Exhibit "D" to the ROC. (ROC, p. 69, para. 341 - Helgeson; SSROC, para. 7.d)
2. On August 31, 2010, Cpl. Pelegrin viewed Darrell Romano's BCDL photograph (ROC Exhibit "D") and confirmed that the person depicted in it is the same person he observed during surveillance on September 15, 16, and 17, 2006, associated to BCDL "3793HH". Corporal Pelegrin further confirmed that Darrell Romano was seen at the Quonset building on September 16 and 17, 2006. (ROC, p. 69, para. 342)

DEA/FBI Interview of Robertson (The Truck Driver)

3. The U.S. Drug Enforcement Administration and FBI interviewed Rae Lynn Robertson, a truck driver for Jade Lien Holdings, Ltd. (ROC, p. 61, para. 291)
4. Robertson had transported two loads of logs to California for Wallace Log and Timber. The first load was transported the previous month (in August 2006), and Robertson was dispatched to pick up the second load on Monday, September 18, 2006, between 7:00 a.m. and 8:00 a.m. (ROC, p. 61, paras. 292 and 294)
5. Curtis Wallace called Robertson at around 6:00 a.m. - 7:00 a.m. to advise her that the load would be ready at around 8:00 a.m. - 8:30 a.m. (ROC, p. 61, para. 294)
6. At 8:00 a.m., Robertson arrived at the lot, where she saw two men completing the inventory of the logs on the load. Wallace provided her with the shipping documents. (ROC, pp. 61-62, paras. 294 and 295)
7. Robertson was shown a photograph lineup and identified Darrell Romano as "Curtis Wallace". (ROC, p. 62, para. 296)

January 24, 2007 - RCMP Meeting with Darrell Romano

8. On January 24, 2007, Darrell Joseph Romano attended at the Vernon RCMP detachment. (ROC, p. 64, para. 312)
9. Constable Pelegrin confirmed that Darrell Romano was the person at the Quonset building on September 17, 2006 (ROC, p. 65, para. 320)

Note: Pelegrin is one of the surveillance officers on Sept. 17, 2006 (ROC 168-170, 174-181, 183-184)

ADMISSIONS

10. Darrell Joseph Romano has admitted that he is the same "Darrell Joseph Romano" referred to in the ROC and sought by the USA in this matter. He has further admitted that he is the same person depicted in the photograph attached as Exhibit "D" to the ROC. (Admissions dated June 26, 2014)
2. Robert Frank Romano Summary of Evidence

This following evidence summary has been abbreviated to focus on the activities of Robert Frank Romano.

SURVEILLANCE EVIDENCE

The following is a summary of the RCMP surveillance evidence contained in the Record of the Case at pages 36 to 40.

September 16, 2006 - Surveillance of Quonset Building

- 10:31 a.m.: Robert Romano is working at the Quonset building located at 1110 Industrial Way, Armstrong, BC, with Djuracic, Nenasheff, and Anderson. (ROC, p.36, para. 159 - Woodworth). Anderson and Nenasheff are using a chainsaw to cut away portions of squared logs to create hollow rectangular compartments in them. Robert Romano and Djuracic similarly hollow-out three additional logs. (ROC, p.36, para. 161 - Svendson)
- 6:30 pm - 7:00 pm: Robert Romano, Darrell Romano, Nenasheff, Anderson, and Djuracic depart the Quonset building site. (ROC, p. 36, para. 162)
- Robert Romano, Darrell Romano, Anderson, Djuracic, and Nenasheff were the only persons seen working in the Quonset building on September 16, 2006. (SROC, para. 2)

September 17, 2006 - Surveillance of Quonset Building

- Robert Romano, Darrell Romano, Anderson, Djuracic, and Nenasheff were the only persons seen working in the Quonset building on September 17, 2006. (SROC, para. 2)
- 8:45 am: Robert Romano and Djuracic arrive at 1110 Industrial Way, Armstrong, BC, in Djuracic's pick-up truck. They change into coveralls and start working inside the Quonset building, out of sight. Chainsaw noises could be heard coming from the Quonset building throughout the day. (ROC, p.38, para. 168 - Pelegrin)
 - o 10:30 am - 10:34 am: U-Haul trailer arrives and is backed into the Quonset building. Joinson arrives at the same time, driving a pick-up truck. (ROC, p.38, para. 169 - Pelegrin)
- 10:43 am: Anderson (with U-Haul) and Joinson leave the Quonset building site. (ROC, p.38, para. 170 - Pelegrin)

- 11:40 am: Robert Romano, Djuracic, and Anderson are inside the Quonset building, while Darrell Romano stands outside watching the roadway (ROC, p.39, para. 174 - Pelegrin)
 - o 12:02 pm: An RCMP vehicle, unrelated to this investigation, arrives. An RCMP officer speaks to Darrell Romano for a minute, then departs. (ROC, p.39, para. 175 - Pelegrin)
- 12:07 pm: Robert Romano, Djuracic, and Anderson exit the Quonset building and have an animated discussion with Darrell Romano. (ROC, p.39, para. 176 - Pelegrin)
- 1:25 pm: Robert Romano enters the Quonset building with Darrell Romano, Djuracic, Nenasheff, and Anderson. After three minutes, Robert Romano exited the Quonset building and again watched the roadway. (ROC p.39, para. 178 - Pelegrin)
 - o 3:32 pm - 4:08 pm: Nenasheff removes ten logs from the Quonset building, loads six of them onto an orange flat-deck truck, and returns the remaining four to the Quonset building. (ROC, p.39, para. 179 - Pelegrin)
- 4:08 pm: Robert Romano and Djuracic leave the Quonset building site in the orange flat-deck truck with the six logs on it. (ROC, p. 39, para. 180 - Pelegrin)
- 4:36 pm: Robert Romano and Djuracic arrive at 9225 Firehall Frontage Road, Salmon Arm, BC, in the orange flat-deck truck carrying the logs. Lengthwise slit are clearly visible on some of the logs. Robert Romano and Djuracic unload the logs from the orange flat-deck truck onto an empty flat-deck semi-trailer, then depart. (ROC, p.39, para. 182 - Woodworth)
- 6:10 pm: Robert Romano and Djuracic return to the Quonset building in the orange flat-deck truck. (ROC, p.40, para. 183 - Pelegrin)

IDENTIFICATION EVIDENCE

Photograph Identification

1. On August 9, 2010, pursuant to a production order, ICBC produced to RCMP Corporal Paul a BC Driver's Licence ("BCDL") photograph of Robert Frank Romano. A copy of that photograph is attached as Exhibit "E" to the ROC. (ROC, p.70, para. 344; SSROC, para. 7.e)
2. On August 31, 2010, Cpl. Pelegrin viewed Robert Romano's BCDL photograph (ROC Exhibit "E") and confirmed that the person depicted in it is the same person he observed during surveillance on September 16, and 17, 2006. Corporal Pelegrin further confirmed that Robert Romano was seen at the Quonset building on September 16 and 17, 2006. (ROC, p.69, para. 342)

ADMISSIONS

3. Robert Romano has admitted that he is the same Robert Frank Romano referred to in the ROC and sought by the USA in this matter. He has further admitted that he is the same person depicted in the photograph attached as Exhibit "E" to the ROC. (Admissions signed April 24, 2014)
3. Ivan Djuracic Summary of Evidence

This following evidence summary has been abbreviated to focus on the activities of Ivan Djuracic.

DJURACIC'S VEHICLE

On February 21, 2007, Constable Monpetit determined that British Columbia license plate "6732GV" was assigned to a white 1990 Ford pick-up truck ("Vehicle") registered to Ivan Djuracic of 175 Dillman Road, Kelowna, BC. (ROC, p.8, para. 26)

This Vehicle was observed on September 15, 16 and 17, 2006 at or near the Quonset building. (ROC, p.8, para. 26)

SURVEILLANCE EVIDENCE

The following is a summary of the RCMP surveillance evidence contained in the Record of the Case at pages 36 to 40.

September 16, 2006 - Surveillance of Quonset Building

- Djuracic, Darrell Romano, Robert Romano, Nenasheff, and Anderson were the only persons seen working in the Quonset building on September 16, 2006. (SROC, para. 2)
- 10:31 am: Djuracic, Nenasheff, Anderson, and Robert Romano are working at the Quonset building located at 1110 Industrial Way, Armstrong, BC, when Darrell Romano arrives. (Woodworth, ROC, p.36, para. 159). Anderson and Nenasheff are using a chainsaw to cut away portions of squared logs to create hollow rectangular compartments in them. Djuracic and Robert Romano similarly hollow-out three additional logs. (Svendson: ROC p.36, para. 161).
- 6:30 pm - 7:00 pm: Djuracic, Darrell Romano, Robert Romano, Nenasheff, and Anderson depart the Quonset building site. (ROC, p. 36, para. 162)

September 17, 2006 - Surveillance of Quonset Building

- Djuracic, Darrell Romano, Anderson, Robert Romano, and Nenasheff were the only persons seen working in the Quonset building on September 17, 2006. (SROC, para. 2)

- 8:45 am: Djuracic and Robert Romano arrive at the Quonset building site in Djuracic's Vehicle. They change into coveralls and start working inside the Quonset building. Darrell Romano arrives at 10:11 a.m. Chainsaw noises are heard coming from the Quonset building throughout the day. (ROC, p.38, para. 168 - Pelegrin)
- 11:40 am: Djuracic, Robert Romano, and Anderson are inside the Quonset building, while Darrell Romano is standing outside watching the roadway. (ROC, p.39, para. 174 - Pelegrin)
- o 12:02 pm: an RCMP vehicle, unrelated to this investigation, arrives and an RCMP officer speaks to Darrell Romano for a minute, then departs. (ROC, p.39, para. 175 - Pelegrin)
- 12:07 pm: Djuracic, Robert Romano, and Anderson exit the Quonset building and have an animated discussion with Darrell Romano. (ROC, p.39, para. 176 - Pelegrin)
- 1:25 pm: Djuracic enters the Quonset building with Robert Romano, Darrell Romano, Nenasheff, and Anderson. (ROC p.39, para. 178 - Pelegrin)
- o 3:32 pm - 4:08 pm: Nenasheff removes ten logs from the Quonset building, loads six of them onto an orange flat-deck truck, and returns the remaining four to the Quonset building. (ROC, p. 39, para. 179 - Pelegrin)
- 4:08 pm: Djuracic and Robert Romano leave the Quonset building site driving the orange flat-deck truck with the six logs on it. (ROC, p. 39, para. 180 - Pelegrin)
- 4:36 pm: Djuracic arrives at 9225 Firehall Frontage Road, Salmon Arm, BC, driving the orange flat-deck truck containing the logs. Lengthwise slits are clearly visible on some of them. Djuracic and Robert Romano unload the logs from the orange flat-deck truck onto an empty flat-deck semi-trailer. (ROC, p.39, para. 182 - Woodworth)
- 6:10 pm: Djuracic and Robert Romano return to the Quonset building site in the orange flat-deck truck. (ROC, p. 40, para. 183 - Pelegrin)
- 7:02 pm: Nenasheff removes four additional logs from the Quonset building and loads them onto the orange flat-deck truck. Djuracic drives the loaded orange flat-deck truck to 9225 Firehall Frontage Road, Salmon Arm, BC. where the four logs are transferred to the same flat-deck semi-trailer holding the six logs. Surveillance is maintained throughout the night on the ten logs. (ROC, p.39, paras. 184, 185, and 187 - Pelegrin and Woodworth)

IDENTIFICATION EVIDENCE

Photograph Identification

1. On July 29, 2010, pursuant to a production order, ICBC produced to RCMP Corporal Monpetit, a BC Driver's Licence ("BCDL") photograph of Ivan Djuracic. A copy of that photograph is attached as Exhibit "H" to the ROC. (ROC, p.71, para. 352; SSROC, para. 7.f)

2. On August 3, 2010, Cpl. Svendson viewed Ivan Djuracic's BCDL photograph (ROC Exhibit "H") and confirmed that the person depicted in it is the same person he observed during surveillance on September 15, 16, and 17, 2006, associated to BCDL 3732 GV. Corporal Svendson can confirm that Ivan Djuracic was seen at the Quonset building on September 15, 16 and 17, 2006. (ROC, p.71, para. 353)

ADMISSIONS

3. Ivan Djuracic has admitted that he is the same "Ivan Djuracic" referred to in the ROC and sought by the USA in this matter. He has further admitted that he is the person depicted in the photograph attached as Exhibit "H" to the ROC. (Admissions dated June 26, 2014).
4. Aaron Randolph Anderson Summary of Evidence

This following evidence summary has been abbreviated to focus on the activities of Aaron Anderson.

ANDERSON'S VEHICLE

On August 24, 2006, Sergeant Woodworth determined that British Columbia license plate "606 GRD" was assigned to a black 2003 GMC Yukon pick-up truck (the "Vehicle") registered to Kelowna Auto Mall Leasing, and leased to Aaron Randolph John Anderson of 3309 17 Street, Vernon, BC. (ROC, pp.8-9, para. 30)

SURVEILLANCE EVIDENCE

The following is a summary of the RCMP surveillance evidence contained in the Record of the Case at pages 36 to 41.

September 16, 2006 - Surveillance of Quonset Building

- 10:31 am: Anderson is working at the Quonset building located at 1110 Industrial Way, Armstrong, BC, with Ivan Djuracic, Jamie Nenasheff, and Robert Romano (Woodworth: ROC, p. 36, para.159).
- During the day, Nenasheff used a Bobcat loader to move logs into and out of the Quonset building. Each log was squared on one side using a portable sawmill. The remaining round sides of the logs were then squared and these round sides and the squared logs were taken further inside the Quonset building. Nenasheff and Anderson then used a chainsaw to cut away portions of squared logs to create hollow rectangular compartments in them. (ROC p.36, para. 161 - Svendson)
- 6:30 pm - 7:00 pm: Anderson leaves the Industrial Way site, along with Nenasheff, Djuracic, and Darrell and Robert Romano. (ROC, p.36, para. 162- the surveillance team)
- Anderson, Darrell Romano, Robert Romano, Djuracic, and Nenasheff were the only persons seen working in the Quonset building on September 16, 2006. (SROC, para. 2)

September 17, 2006 - Surveillance of Quonset Building

- 10:30 am - 10:34 am: Anderson arrives at the Quonset building site driving a vehicle bearing BC license plate 07660HN (registered to Kelly Parisi), towing a U-Haul trailer bearing Kansas license plate 455571. Anderson immediately backs the trailer into the Quonset building. Joinson arrives at the same time, driving a pick-up truck. (ROC, p.38, para. 169 - Pelegrin)
- 10:43 am: Anderson and Joinson leave the Quonset building site. Anderson is driving the same vehicle towing the U-Haul trailer. (ROC, p.38, para. 170 - Pelegrin)
- 11:03 am - 11:12 am: Anderson and Joinson drive to the parking lot of the Village Green Hotel and Casino in Vernon, BC, then return to the Quonset building site in Joinson's pick-up truck. Joinson departs shortly after. (ROC, p.38, paras. 171 and 173 - Woodworth and Petelle).
- 11:40 am: Anderson is inside the Quonset building with Robert Romano and Djuracic, while Darrell Romano stands outside watching the roadway. (ROC, p.39, para. 174 - Pelegrin)
- o 12:02 pm: an RCMP vehicle, unrelated to this investigation, arrives. An RCMP officer speaks to Darrell Romano for a minute, then departs. (ROC, p.39, para. 175 - Pelegrin)
- 12:07 pm: Anderson exits the Quonset building with Robert Romano and Djuracic. They have animated discussion with Darrell Romano. (ROC, p.39, para. 176 - Pelegrin)
- 1:25 pm: Anderson enters the Quonset building with Djuracic, Nenasheff, and Darrell and Robert Romano. (ROC, p.39, para. 178 - Pelegrin)
- o 3:32 pm - 4:08 pm: Nenasheff removes ten logs from the Quonset building, loads six of them onto an orange flat-deck truck, and returns the remaining four to the Quonset building. Djuracic and Robert Romano then drive the orange flat-deck truck with the six logs on it to 9225 Firehall Frontage Road, Salmon Arm, BC. Lengthwise slits are clearly visible on some of the logs. Djuracic and Robert Romano unload the logs from the orange flat-deck truck onto an empty flat-deck semi-trailer. (ROC, p.39, paras. 179, 180, and 182 - Pelegrin and Woodworth)
- 4:34 pm: Anderson is operating a chainsaw inside the Quonset building. Darrell Romano and Nenasheff are also inside the building. Hammering noises are heard coming from the Quonset building. (ROC, p.39, para. 181 - Pelegrin)
- o 7:02 pm: Nenasheff removes four additional logs from the Quonset building and loads them onto the orange flat-deck truck. Djuracic drives the loaded orange flat-deck truck to 9225 Firehall Frontage Road, Salmon Arm, BC, where the four logs are transferred to the same flat-deck semi-trailer holding the six logs. Surveillance is maintained throughout the night on the ten logs. (ROC, p.39, paras. 184, 185, and 187 - Pelegrin and Woodworth)
- 7:55 pm - 8:10 pm: Anderson's Vehicle arrives at 9225 Firehall Frontage Road, Salmon Arm, BC, along with Darrell Romano's and Nenasheff's pick-up trucks. Several males (unidentifiable because of darkness), work in the area of the flat-deck semi-trailer, then leave about one hour later. (ROC: p.40, para. 186)

· Anderson, Darrell Romano, Robert Romano, Djuracic, and Nenasheff were the only persons seen working in the Quonset building on September 17, 2006. (SROC, para. 2)

September 18, 2006 - Surveillance of Logs to the U.S. Border

· 6:07 am - 7:07 am: Anderson's Vehicle arrives at 9225 Firehall Frontage Road, Salmon Arm, BC, along with the orange flat-deck truck, and Darrell Romano's and Nenasheff's pick-up trucks. (ROC, p.40, para. 188 - Woodworth) All vehicles depart by 8:13 a.m. (ROC, p.41, para. 190 - Svendson)

IDENTIFICATION EVIDENCE

Photograph Identification

1. On July 29, 2010, pursuant to a production order, ICBC produced to RCMP Corporal Monpetit a BC Driver's Licence ("BCDL") photograph of Aaron Randolph Anderson. A copy of that photograph is attached as Exhibit "F" to the ROC. (ROC, p.70, para. 346 - Monpetit; SSROC, para. 7.e)
2. On August 3, 2010, Cpl. Svendson viewed Anderson's BCDL photograph (ROC Exhibit "F") and confirmed that the person depicted in it is the same person he observed during surveillance on September 15, 16, 17 and 18, 2006, associated to BCDL 606 GRD. Corporal Svendson can confirm that he observed Anderson working with a chainsaw in the Quonset building on September 16 and 17, 2006. (ROC, p.70, para. 347 - Svendson)

March 21, 2007 - RCMP Meeting with Anderson

3. On March 21, 2007, Cst. Ellis and Cpl. Svendson met Anderson at the Best Western hotel in Vernon, BC. Anderson verbally identified himself to Cpl. Svendson and provided his address and phone number. (ROC, p.70, para. 348 - Svendson)
4. On August 3, 2010, Corporal Svendson viewed the ICBC photograph of Anderson (ROC Exhibit "F"), and confirmed that the man depicted therein is the same man he met on March 21, 2007. (ROC, p.70, para. 348 - Svendson)
5. Constable Svendson has identified the person depicted in ROC Exhibit "F" to be the same person he surveilled driving the vehicle towing the U-Haul trailer and operating a chainsaw in the Quonset building on September 16 and 17, 2006. Constable Svendson has also identified Anderson on videotape taken during surveillance. (ROC p.67, para. 329; p.70, paras. 347 and 348)

ADMISSIONS

6. Aaron Randolph Anderson has admitted that he is the same Aaron Randolph Anderson referred to in the ROC and sought by the USA in this matter. He has further admitted that he is the same person depicted in the photograph attached as Exhibit "F" to the ROC. (Admissions dated September 10, 2013).
5. Jamie Daniel Nenasheff Summary of Evidence

This following evidence summary has been abbreviated to focus on the activities of Jamie Daniel Nenasheff.

NENASHEFF'S VEHICLE

On September 15, 2006, Sergeant Woodworth determined that British Columbia license plate "852 ESK" was assigned to a black 1999 Dodge Durango ("Nenasheff's Vehicle") registered to Jamie Daniel Nenasheff of 2504 43 Avenue, Vernon, BC. (ROC, p. 8, para. 29)

This Vehicle was seen during surveillance on September 16 and 17, 2006, at the Quonset building located at 1110 Industrial Way, Armstrong, BC. (ROC, p. 67, para. 328, and p. 71, para. 350)

SURVEILLANCE EVIDENCE

The following is a summary of the RCMP surveillance evidence contained in the Record of the Case at pages 36 to 40.

September 16, 2006 - Surveillance of Quonset Building

- 10:31 am: Nenasheff, Djuracic, Anderson, and Robert Romano are working in the Quonset building located at 1110 Industrial Way, Armstrong, BC, when Darrell Romano arrives. (ROC, p. 36, para. 159 - Woodworth)
- During the day, Nenasheff uses a Bobcat loader to move logs into and out of the Quonset building. (ROC, p. 36, para. 161)
- Nenasheff and Anderson use a chainsaw to cut away portions of squared logs to create hollow rectangular compartments in them. Djuracic and Robert Romano similarly hollowed-out three additional logs. (ROC p. 36, para. 161 - Svendsen) Marihuana was later concealed in these hollowed out logs, and transported to the USA. (ROC, p. 36, para. 163)
- 6:30 pm - 7:00 pm: Nenasheff, Darrell Romano, Anderson, Djuracic, and Robert Romano depart the Quonset building site. (ROC, p. 36, para. 162)

- Constable Svendson has identified Nenasheff as the male associated with the black Durango bearing BC license plate "852 ESK" recorded on surveillance video at the Quonset building on September 16, 2006. (ROC, p. 67, para. 328) Corporal Svendson can further confirm that Nenasheff was observed working about the Quonset building on September 16, 2006. (ROC, p. 71, para. 350)
- Nenasheff, Darrell Romano, Anderson, Robert Romano, and Djuracic were the only persons seen working in the Quonset building on September 16, 2006. (SROC, para. 2)

September 17, 2006 - Surveillance of Quonset Building

- o 10:30 am - 10:34 am: U-Haul trailer arrives and is backed into the Quonset building. Joinson arrives at the same time, driving a pick-up truck. (ROC, p.38, para. 169 - Pelegrin)
- o 10:43 am: Anderson (with U-Haul) and Joinson leave the Quonset building site. (ROC, p.38, para. 170 - Pelegrin)
- o 11:40 am: Robert Romano, Djuracic, and Anderson are inside the Quonset building, while Darrell Romano stands outside watching the roadway (ROC. p.39, para. 174 - Pelegrin)
- o 12:02 pm: An RCMP vehicle, unrelated to this investigation, arrives. An RCMP officer speaks to Darrell Romano for a minute, then departs. (ROC, p.39, para. 175 - Pelegrin)
- o 12:07 pm: Robert Romano, Djuracic, and Anderson exit the Quonset building and have an animated discussion with Darrell Romano. (ROC, p.39, para. 176 - Pelegrin)
- 12:34 pm: Nenasheff arrives at the Quonset building site in his Vehicle. (ROC, p. 39, para. 177)
- 1:25 pm: Nenasheff enters the Quonset building with Robert Romano, Djuracic, Darrell Romano and Anderson. (ROC p. 39, para. 178 - Pelegrin)
- 3:32 pm - 4:08 pm: Nenasheff removes ten logs from the Quonset building, loads six of them onto an orange flat-deck truck, and returns the remaining four to the Quonset building. (ROC, p. 39, para. 179 - Pelegrin)
- o Djuracic and Robert Romano then drive the orange flat-deck truck with the six logs on it to 9225 Firehall Frontage Road, Salmon Arm, BC. Lengthwise slits are clearly visible on some of the logs. Djuracic and Robert Romano unload the logs from the orange flat-deck truck onto an empty flat-deck semi-trailer. (ROC, p. 39, paras. 180 and 182 - Pelegrin and Woodworth)
- 4:34 pm: Nenasheff is inside the Quonset building with Darrell Romano and Anderson. Anderson is operating a chainsaw. Hammering noises are heard coming from the Quonset building. (ROC, p. 39, para. 181 - Pelegrin)
- 7:02 pm: Nenasheff removes four additional logs from the Quonset building and loads them onto the orange flat-deck truck. (ROC, p. 39, para. 184)

o Djuracic drives the loaded orange flat-deck truck to 9225 Firehall Frontage Road, where the four logs are transferred to the same flat-deck semi-trailer holding the six logs. Surveillance is maintained throughout the night on the ten logs. (ROC, p. 39, paras. 185 and 187 - Pelegrin and Woodworth)

- 7:55 pm - 8:10 pm: Nenasheff's Vehicle arrives at 9225 Firehall Frontage Road, Salmon Arm, BC, along with Darrell Romano's and Anderson's pick-up trucks. Several males (unidentifiable because of darkness), work in the area of the flat-deck semi-trailer, then leave about one hour later. (ROC, p. 40, para. 186)

- Constable Svendsen has identified Nenasheff as the male associated with the black Durango bearing BC license plate "852 ESK" recorded on surveillance video at the Quonset building on September 17, 2006. (ROC, p. 67, para. 328) Corporal Svendsen can further confirm that Nenasheff was observed working about the Quonset building on September 17, 2006. (ROC, p. 71, para. 350)

- Nenasheff, Darrell Romano, Anderson, Robert Romano, and Djuracic were the only persons seen working in the Quonset building on September 17, 2006. (SROC, para. 2)

September 18, 2006 - Surveillance of Logs to the U.S. Border

- 6:07 am - 7:07 am: Nenasheff's Vehicle arrives at 9225 Firehall Frontage Road, Salmon Arm, BC, along with the orange flat-deck truck, and Anderson's and Darrell Romano's pick-up trucks. (ROC, p. 40, para. 188 - Woodworth). By 8:13 a.m., all vehicles, except Darrell Romano's, had departed this location. (ROC, p. 41, para. 190 - Svendsen)

IDENTIFICATION EVIDENCE

March 20, 2007 - Attempted Interview of Nenasheff

1. On March 20, 2007, Constables Svendsen and Brooks attended Nenasheff's residence located at 21 Kelowna Road, Vernon, BC, in an attempt to interview Nenasheff. Nenasheff stated that he had talked to a lawyer and did not wish to answer any questions. (ROC, p. 67, para. 327) At that time, Constable Brooks identified Nenasheff from previous interactions. (ROC, p. 67, para. 328)
2. Constable Svendsen reviewed video recording taken by Constable Pelegrin at the Quonset building on September 17, 2006, to refresh his memory of the events, vehicles, and people involved, and identified Nenasheff as the male associated with the black Durango bearing BC license plate "852 ESK" and recorded on surveillance video at the Quonset building on September 16 and 17, 2006. (ROC, p. 67, para. 328)

Photograph Identification

3. On July 29, 2010, pursuant to a production order, ICBC produced to RCMP Constable Helgeson a BC Driver's Licence ("BCDL") photograph of Jamie Daniel Nenasheff. A copy of that photograph is attached as Exhibit "G" to the ROC. (ROC, p. 71, para. 349 - Monpetit; SSROC, para. 7.f)
4. On August 3, 2010, Cpl. Svendson viewed Nenasheff's BCDL photograph (ROC Exhibit "G") and confirmed that the person depicted in it is the same person he observed during surveillance on September 15, 16, 17 and 18, 2006, associated to BCDL "852 ESK". Corporal Svendson can further confirm that Nenasheff was observed working about the Quonset building on September 15, 16 and 17, 2006. (ROC, p. 71, para. 350)

ADMISSIONS

5. Jamie Daniel Nenasheff has admitted that he is the same "Jamie Daniel Nenasheff" referred to in the ROC and sought by the USA in this matter. He has further admitted that he is the same person depicted in the photograph attached as Exhibit "G" to the ROC. (Admissions dated April 22, 2014)

IV. SUBMISSIONS OF THE PERSONS SOUGHT

A. Shane Fraser

- [122] Mr. Fraser submits that identity is not proven. The photo in the ROC does not look like him.
- [123] There are inconsistencies in the ROC regarding who was the boss or in charge of the organization. The individuals described as "Mr. One" and the "money man" do not match the description of Fraser. He also notes inconsistencies in the statement of Wackerman.
- [124] It is his submission that there is no evidence of knowledge or intention to export or membership in a conspiracy to export marihuana. He says that there is no evidence that he knew or joined in a plan to export marihuana.

B. Todd Ferguson

- [125] Mr. Ferguson, in an able written submission, also challenges the sufficiency of the evidence.
- [126] With regard to Identification, he addresses the 4SROC as follows:

1. Identification of Mr. Ferguson
1. Section 29(1)(a) of the Extradition Act requires that the extradition judge must be satisfied that the person before the court is the same person sought by the extradition partner. This requirement is not admitted by the Respondent and puts the Applicant to the strict proof thereof.

2. At paragraph 40 of the ROC which is dated August 29, 2011, Cst. Paul obtained 2 sheets displaying Ferguson's Driver's Licence photo. One photo was accompanied by Ferguson's personal information. The second sheet simply displayed Ferguson's Driver's License photo.
3. The ROC at paragraph 230, states that Wackerman is expected to testify that on May 25, 2008 he pleaded guilty to possession with intent to distribute marihuana pursuant to the US District Court for the Eastern District of California, and has been cooperating with the government. Wackerman has identified Todd Ferguson as his contact in Canada. Wackerman has identified Ferguson from the photograph attached to this Record as Exhibit "B". He stated Ferguson was an old friend whom he had transported marihuana on at least one occasion in the past.
4. The Respondent submits that it is apparent from paragraph 230 of the ROC that Exhibit "B" was only a photograph and did not include any further identifying information. Further, the ROC at paragraph 338 states, "Cst. Pollard is expected to further testify that on October 31, 2006 he positively identified Ferguson by comparing a male located inside a Starbucks Coffee Shop in Vernon to the photograph of Ferguson at Exhibit "B Cst. Pollard further engaged Ferguson in a short conversation also confirming that Ferguson's voice was intercepted in phone conversations with Joinson and Fraser."
5. The ROC has made no changes with respect to Exhibit "B" since August 29, 2011; when it was signed by Heilco P. Coppola, Assistant US Attorney until the Supplemental ROC dated February 6, 2015 was issued and signed February 6, 2015 by Heilco P. Coppola.
6. On the 13th day of February, 2014, an Authority to Proceed pursuant to Section 15 of the Extradition Act was issued on behalf of the Ministry of Justice for Canada which authorized the Attorney General of Canada to proceed before the Supreme Court of BC to seek an Order for the Committal of Shane Donald Fraser, Todd Ian Ferguson and others. The Authority to Proceed was based on the ROC showing the person in Exhibit "B" as Todd Ian Ferguson.
7. It is not lawful to extradite a citizen to a foreign state that was not identified properly. The bald assertions in the Fourth Supplemental Record of the Case at paragraph 2, simply states, "For clarification in reference to Exhibit "B" and Exhibit "C" of the original record, the 2 photos were inadvertently transposed. Exhibit "B" is a photograph of Daniel James Joinson and Exhibit "C" is a photograph of Todd Ian Ferguson. The witnesses presenting the Identification Statements in the original Record identify the correct photographs."
8. There is no indication in the Fourth Supplemental Record of the Case as to who transposed the photographs in Exhibit "B" and Exhibit "C" and in what circumstances. There is no indication as to whether or not the photos were transposed before or after they were shown to Wackerman or Cst. Pollard. There are no marks, initials or notes as to which photo was shown to Wackerman.

9. The ROC and the Fourth Supplemental Record of the Case do not go back to the sources of identification to establish whether there was a factual error or a clerical error. There is no basis to establish as is required under Section 29(1)(a) of the Extradition Act that the person is the person sought by the Extradition partner.
10. It is submitted that Exhibit "A" in the Fourth Supplemental Record of the Case is not helpful since it is not a photograph that was shown to Mr. Wackerman or Cst. Pollard.
11. The evidence in the ROC at paragraph 356 gives Todd Ferguson the following physical characteristics:

"Todd Ian FERGUSON currently resides at 8180 Wallace Rd., Vernon, BC, Canada V1B 3N2. His identifiers are as follows:

DOB: April 19, 1968

Citizenship: Canada

Height: 180 cm

Weight: 93 kg

Eye Colour: Blue

Hair Colour: Blonde"

12. The Respondent states that this written description does not establish the identity of the person but creates grave uncertainty.
13. The Applicant has provided further information that is to be filed with the Court concerning an ICBC printout of the Respondent Todd Ferguson's Driver's Licence from December 11, 2006. This information indicates that Ferguson has blue eyes, blonde hair, weight of 89.0 kg and height of 211 cm, which does not accord with paragraph 356 in the ROC.

C. Daniel Joinson

[127] Mr. Joinson submits that the delay of eight years in prosecuting this case is excessive. It has caused great hardship and prejudice. There is no explanation for the delay.

[128] It is conceded by Mr. Joinson that the threshold is met with regard to identity and his participation in the offences.

D. Darrell Romano

September 15, 2006 - Meeting with "Joinson"

Darrell Romano is seen meeting and speaking with a man named "Joinson", but there is no evidence in the ROC as to what the two met or spoke about. Because the Requesting State is not relying on the wiretap evidence (or any other prior evidence set out in the ROC), there is no context to this meeting or as to the relationship between the two men. This absence of detail is

insufficient to make the required inferences is this circumstantial case. This is the first time that ROC mentions Darrell Romano or the Quonset hut. There is also nothing in the ROC which provides any details as to the Quonset hut itself; its size, dimensions, exits, entries, or where it is situated. Again, in this circumstantial case where knowledge is the central issue, these are details that are required in order to establish a reasonable inference of knowledge - that is - whether the five men who were seen in and around the Quonset hut between September 15-18, 2006 knew that the logs sent down to California contained marijuana.

September 16, 2006 - Surveillance at the Quonset "Hut"

There is nothing at all suspicious about hollowing out logs. Not only are key details of the Quonset hut lacking, there is also no evidence in the ROC as to who owns or leases the Quonset hut and whether it is a legitimate site for hollowing out logs. The only available inference is that what is going on at the Quonset is entirely legitimate. It is also significant that there is no evidence that Wallace Log and Timber (the alleged (fictitious) company that is sending the logs to California) has any connection with Quonset hut or the property on which it is situated. That company is instead known to lease the property at 9225 Firehall Frontage Road, in Salmon Arm, BC (see proposed evidence of Dagmar Wanke). In these circumstances, the evidence as to mere presence at the Quonset hut itself means nothing.

September 17, 2006 - Surveillance of Quonset hut

Constable Pelegrin's belief that the U-Haul trailer was loaded with marijuana is a bare, conclusory assertion. As it relates to the case against Darrell Romano, there is no indication of what available evidence will be tendered at trial to support that assertion. As held in *USA v. Ferras*, [2006] 2 S.C.R. 77, at para.58, where, as here, the requesting state makes a bare assertion in the ROC that evidence exists "without providing any description whatsoever of its content or form", the availability of evidence may be in doubt. In those circumstances, extradition should be refused. The extradition judge looks at whether evidence exists and is available for trial at the time of the extradition hearing, and not as to the future state of the evidence. Importantly, the requesting state is not relying on intercepted communications, which could have provided the context and the circumstantial evidence supporting Constable Pelegrin's belief.

Other than the U-Haul itself, the requesting state relies on: (1) the "animated discussion" between Darrell and Robert Romano, Djuracic, Anderson; and (2) Darrell Romano (and later Robert Romano) watching the roadway outside the Quonset to support the inference that the men in the Quonset were cutting open logs and stuffing marijuana into them. These two pieces of evidence considered individually and cumulatively, however, at best, amount to mere suspicion. They do not establish the test for committal - that evidence is insufficient because a jury could not convict beyond a reasonable doubt.

A useful comparator is the recent decision in *France v. Diab*, 2014 ONCA 374, a case, which similarly dealt with circumstantial evidence in an extradition context. In that case, there were five pieces of evidence that potentially implicated Diab in a Paris bombing in 1980.

The committal judge found that four of the five pieces of evidence amounted to mere suspicion, but the fifth piece (the expert report) put the case over the line to establish the case for committal (Diab, at paras. 17, 44, 77, 78). That determination was upheld on appeal. Here, animated discussion and watching the roadway were matters of suspicion and, in fact, are far weaker than the four pieces of evidence which were found in Diab to only amount to suspicion and thus insufficient support an order of committal.

The proposed identification evidence of Rae Lynn Robertson

Again, key details are missing surrounding the identification evidence of Ms. Robertson. There are no details or context behind how she believes that Darrell Romano is Curtis Wallace (i.e. did she assume that he was Wallace? did he introduce himself as Wallace?). These are important details that are required to draw the required inferences to support an order of committal. There is no other evidence in the ROC of anyone ever previously identifying Curtis Wallace. If anything, the evidence in the ROC is that Curtis Wallace sends other people to do things for him.

In addition to these missing but important details, the identification evidence of Ms. Robertson as set out in the ROC is deficient. This is because there is no indication as to the composition of the photopack through which Robertson identified Darrell Romano. And the photopack is not appended to the ROC. (see, USA v. Walker 2008 BCCA 55, at paras. 25, 26, 30)

Summary of issues and position:

1. Darrell Romano had no knowledge that the logs contained marijuana: His position is that there is insufficient evidence establishing knowledge that the logs contained marijuana. This lack of evidence going to knowledge is fatal to establishing Darrell Romano's liability for trafficking or a conspiracy to traffic. At best, there is only mere suspicion. The evidence, as set out in the ROC, is insufficient to establish the test for committal. Alternatively, Darrell Romano submits that the case against him is, at best incomplete, in that significant details are missing in the ROC to establish the required inference that he knew about the marijuana. The most glaring example of this is Constable Pelegrin's bare assertion in the ROC that the U-Haul was "loaded with marijuana". Taken at its highest, the sum total of the evidence is that Darrell Romano was in the presence of some logs in Canada, which were ultimately found to contain marijuana in California. There is no indication in the ROC of when the logs were stuffed or where they were stuffed.
2. The identification evidence of Ms. Robertson: As set out above, this portion of the evidence as it relates to Darrell Romano is incomplete and cannot to establish the case for committal. This signifies that the evidence as a whole is, at best, incomplete and extradition should be refused because the requesting state has not met its burden. (Walker, at para.30)

3. Membership in the conspiracy: The question is whether Darrell Romano is a member of the conspiracy. Because there is insufficient evidence of his knowledge that the logs contained marijuana (failing to establish his liability for trafficking), he cannot be considered a member of the conspiracy as described by Daniel Wackerman. This organization uses people as functionaries and keeps them in the dark. This is what they did to Darrell Romano.
4. Order of Committal should be refused: Darrell Romano submits that the requesting state's application for an order committal should be dismissed. He should be discharged from these proceedings.

E. Robert Romano

1. Robert Romano was almost sixty four at the time of the alleged offences. He is now almost seventy one.
2. There are no other references to Robert Romano with regard to the alleged offences [except to subsequent id] other than the surveillance evidence on 16 and 17 September, 2006. No other evidence exists that he was involved in any other way direct or circumstantial from wire tap monitoring or the statements of others. At its best the R.C.M.P. evidence says he assisted at the Quonset building and with log loading at Fire hall Frontage Road.
3. The Crown on behalf of the requesting state concedes that the actions of hollowing out logs in and of itself is not a criminal activity and that it can be done for a legitimate purpose in the log home building industry.

Analysis:

The requesting state is not relying on wiretap intercepts which contain no reference to Robert Romano. The requesting state relies on surveillance and other circumstantial evidence. Further the requesting state relies on inference that marijuana was transferred from a U-Haul truck which was backed into the Quonset building and then alleges various accused stuffed packages of marijuana into compartments cut out of logs in that building. The requirement to draw the long bow of inference points up the weakness in the requesting states case particularly with respect to Robert Romano and the frailties of surveillance.

The cases relied on are *R v. Ferras* [2006] S.C.C. It follows that the extradition judge must judicially consider the facts and the law and be satisfied that they justify committal before ordering extradition. The judge must act as a judge and not a rubber stamp." See para 40 ... "If the extradition judge possesses neither the ability to declare unreliable evidence inadmissible nor to weigh and consider the sufficiency of the evidence, committal for extradition could occur in circumstances where committal for trial in Canada would not be justified." Also see para 41" For a person sought to receive a fair extradition hearing, the extradition judge must be able to evaluate the evidence, including its reliability, to determine whether the evidence establishes a sufficient case to commit". Further see para 42 " If s. 29 (1) can be interpreted in away that allows the extradition judge to weigh the evidence and refuse to extradite if the case as a whole is

insufficient, then that interpretation should be adopted. If it cannot then the Act is inconsistent with the Charter and is void to the extent of that inconsistency" Finally see para 54 "Challenging the justification for committal may involve adducing evidence or making arguments on whether the evidence could be believed by a reasonable jury. Where such evidence is adduced or such arguments are raised, an extradition judge may engage in a limited weighing of evidence to determine whether there is a plausible case." See also S. 32 Extradition Act for limited ability to scrutinize the evidence.

See also R. v. Graham [2007] BCCA particularly at para 32 where MJ Donald says "In summary, Ferras stands for the proposition that extradition judges now have the discretion to disregard evidence shown to be unreliable or unavailable and in respect of the evidence that remains to determine by an assessment of the evidence, including a limited weighing of the evidence, whether it is sufficient for a properly instructed jury acting reasonably to reach a verdict of guilty in Canada", (my emphasis). It appears MJ Donald recognizes a limited discretion to weigh evidence that goes beyond simply reliability and availability. See also R. v. Lorenz (2007) BCCA where MJ Newbury notes at para 32 Ferras has been described as having turned "a new jurisprudential page in the law of extradition" and goes on to confirm Lorenz's discharge at first instance by MJ Bennett.

Using this legal framework it is argued that Robert Romano is entitled to a limited weighing of the evidence both in terms of reliability and sufficiency.

Para 159 ROC Svendsen surveillance Quonset sees Nenasheff using bobcat loader to take logs inside Quonset and hollow out logs says Robert Romano did same. No explanation how or if he actually saw this, contrast with para 168 ROC Pelegrin sees Romano go into Quonset can't see what is happening inside. These are two mutually exclusive and irreconcilable observations which speak directly to lack of reliability and/or sufficiency.

Para 176 ROC... Pelegrin surveillance Robert Romano involved in animated conversation. Without knowing what was said and who said it how can this in any way be meaningful? Did Robert Romano say anything at all?

Para 178 ROC... Pelegrin surveillance Robert Romano comes out and "watched the roadway". In the context of an unrelated visit from a police officer that occurred one and a half hours earlier how can this be meaningful at all? It has no significance. Standing and looking at the road in these circumstances could mean anything.

Para 182 ROC... Sgt. Woodsworth surveillance easily able to see slits on logs accompanied by Robert Romano no apparent attempt to conceal when delivered to Firehall Frontage, slits never seen again after unidentified males seen working in the area of the semi trailer. There is no evidence that Robert Romano ever returned to the semi trailer after loading earlier that evening. With respect to Robert Romano there is a clear break in continuity and significantly undermines the requesting state's assertion that Robert Romano had knowledge of what was in the logs that were eventually transported into California. A strong inference can be drawn that if marijuana was placed in those logs in BC it was done at dead of night at Firehall Frontage the lids being

screwed down there. At the very least these observations by Woodsworth put into question all the observations at the Quonset building vis a vis Robert Romano and their reliability and sufficiency.

Unfortunately for the requesting state they know very little about what went on in the Quonset building or what if anything was in the Uhaul. Even if the requesting states evidence could support a conclusion that a sixty four year old man wielded a chain saw for nine hours (which it cannot) what supports the inferences that Robert Romano trafficked or committed any acts in furtherance of a conspiracy? Being there and assisting with loading in and of itself does not support the inference. As Mr. Edelmann said, it is quite clear that the organization used people who didn't know what was going on. Even taking the requesting state's evidence at its best (which I say you cannot) Robert Romano should not have been expected to conclude that what was going on was not legitimate. Hollowing out logs is itself legal and particularly so when there are legitimate purposes for doing so.

F. Ivan Djuracic

1. [...]Shane Donald FRASER was in charge of the FRASER ORGANIZATION, assisted by seven other Canadians, including Todd Ian FERGUSON, Daniel James JOINSON, Darrell Joseph ROMANO, Robert Frank ROMANO, Ivan DJURACIC. Aaron Randolph ANDERSON, and Jamie Daniel NENASHEFF. [...] JOINSON's function within the organization was to gather marijuana and supply it to Darrell ROMANO, who along with Robert ROMANO, DJURACIC. ANDERSON and NENASHEFF, would package the marijuana in hollowed-out logs for shipment to the United States. On at least nine occasions between March 2006 and September 2006, these hollowed-out logs were imported to the United States on log trucks destined for Skookum Distributing, WACKERMAN's log-home business. Investigation revealed that none of the log truck drivers were aware that they were transporting marijuana into the United States. [...]
4. Corporal PAUL will further testify that the interception of FRASER's communication yielded the identification of Todd FERGUSON and Daniel JOINSON. FERGUSON and JOINSON were further observed going to a Quonset hut where Darrell ROMANO, Robert ROMANO, Ivan DJURACIC. Aaron ANDERSON and Jamie NENASHEFF were identified working on concealing marijuana into hollowed-out logs. The logs containing were then transported into the United States and delivered to Daniel WACKERMAN.

The information contained in paragraphs 1 and 4 are bare assertions and do not set out the evidence that supports the conclusions made by the officers. The evidence that might support the conclusions is either not before the Court or is not being relied upon by the Requesting State. The Court cannot base a committal finding on bare assertions.

The Requesting State has accepted that the hollowing out of logs, on its own, is a legitimate undertaking and does not give rise to an inference of suspicious or nefarious conduct. All of the conduct attributed to Mr. Djuracic is consistent with legitimate employment modifying logs for log home construction. The statement that marijuana was later concealed in the specific logs in

question is speculative, as there was no observation of the interior of the Quonset building and the logs which were modified on that particular date may have remained in the building. It is unclear on the evidence before the Court when the marijuana was placed in the logs shipped to the United States.

September 17, 2006 - Surveillance at the Quonset Building

All the conduct attributed to Mr. Djuracic is consistent with employment modifying logs for log home construction. There is no indication he was aware that a police car attended the property, much less that he altered his conduct in any way as a result of the attendance of the police. Even if an inference could be drawn that the "animated discussion" was related to the police attendance, there is no basis to conclude that the police attendance was disclosed to Mr. Djuracic.

This conduct is consistent with legitimate employment modifying logs for log home construction. Moreover, the fact that the slits are clearly visible on the logs confirms that the log modifications were not inherently suspicious activity and that Mr. Djuracic is not concerned about hiding his activities.

Several males worked in the area of the logs for over an hour. All other observations of Mr. Djuracic he was driving a vehicle registered to him. No vehicle associated with Mr. Djuracic is observed at this time. The police are unable to say what was done under cover of darkness. There is no indication that Mr. Djuracic was present or in any way involved.

The conclusion that Joinson and Anderson were transporting marijuana in the U-Haul could only have been based on the police interpretation of the wiretap evidence. In the context of the evidence before the Court, there is very little information about the activities of those organizing the marijuana. The statement about the U-Haul is little more than a bare assertion and speculation. Even if such speculative conclusions could be the basis of findings by a jury, without further evidence about the layout and size of the Quonset building, the timing of the filling of the logs and whether these were in fact the same logs that were worked on that day, there is no basis to infer that Mr. Djuracic had knowledge of anything not related legitimate employment modifying logs. The Record of the Case makes is clear that the organization uses a number of individuals for transportation who are not aware of the criminal nature of the enterprise. It is therefore incumbent on the Requesting State to demonstrate that Mr. Djuracic was or ought to have been aware of the true nature of the operation.

Photo Identification of DJURACIC

Aside from noting that the surveillance does not always see individuals arriving at the site, which implies only partial surveillance of entries and exits to the property, this observation is consistent with legitimate employment by Mr. Djuracic modifying logs for log home construction.

G. Aaron Anderson

ALLEGATIONS

1. With respect to Aaron Anderson, these are the allegations set out in the Record of the Case, with observations:

Overview

1. ...Shane Donald FRASER was in charge of the FRASER ORGANIZATION, assisted by seven other Canadians, including Todd Ian FERGUSON, Daniel James JOINSON, Darrell Joseph ROMANO, Robert Frank ROMANO, Ivan DJURACIC, Aaron Randolph ANDERSON, and Jamie Daniel NENASHEFF.... JOINSON'S function within [sic] the organization was to gather marijuana and supply it to Darrell ROMANO, who along with Robert ROMANO, DJURACIC, ANDERSON and NENASHIFF, would package the marijuana in hollowed-out logs for shipment to the United States.

Note: this is a conclusory statement - "mere ... surmise" (Ferras, para. 19)

Summary of the Evidence

4. FERGUSON and JOINSON were further observed going to a Quonset hut where Darrell ROMANO, Robert ROMANO, Ivan DJURACIC. Aaron ANDERSON and Jamie NENASHEFF were identified working on concealing marijuana into hollowed- out logs....

Note: this is not only a conclusory statement, it is fundamentally false: they were not "identified working on concealing marijuana into hollowed-out logs." The most that can be said is that the persons named (or more precisely, persons who looked like them) were identified as being present at the Quonset hut. There is no evidence as to what specifically they were doing. It is therefore misleading and speculative to say that they "were identified working on concealing marijuana into hollowed-out logs."

Ownership Records

30. Aaron ANDERSON'S Black GMC SUV: Sergeant WOODWORTH is expected to further testify that on August 24, 2006, he made an inquiry into British Columbia license plate 606GRD. The result indicated that British Columbia license plate 606GRD, assigned to a black 2003 GMC Yukon, was registered to Kelowna Auto Mall Leasing (Lessor) and Aaron Randolph John ANDERSON (Lessee), 3309 17 Street, Vernon, BC.

September 15, 2006 - Surveillance of JOINSON

Note: Mr. Anderson was not alleged to have been present at the Quonset on September 15; nonetheless at paragraph 347 of the ROC, Corporal Svendson identifies Mr. Anderson by his license photograph and "confirmed that the photograph depicted the same individual he observed on surveillance on September 15, 16, 17 and 18, 2006." This is ambiguous, since it implies that Mr. Anderson was observed on all four days. Paragraph 347 states, "Corporal SVENDSON can confirm and testify that Aaron ANDERSON was observed ... at the Quonset

Building on September 16 and 17, 2006" - not September 15. At paragraph 329, the ROC states, "Constable SVENDSON identified ANDERSON as being at the Quonset building during surveillance on September 16 and 17, 2006" - again no reference to the 15th.

September 16, 2006 - Surveillance of JOINSON and Others at the Quonset Building

159.Sergeant WOODWORTH is expected to further testify that at 11:37 hours, Darrell ROMANO arrived at 1110 Industrial Way, Armstrong; already present and working at the Quonset building were four men, later identified as Ivan DJURACIC, Jamie NENASHEFF, Aaron ANDERSON and Robert ROMANO.

Note: The four persons already present were not observed arriving; they were observed later, and identified later still (para. 159). Furthermore, what they were doing ("working") is vague and based on assumption and surmise.

160....JOINSON had arrived sometime earlier undetected by surveillance.

Note: Since the four men referred to in paragraph 159 were "already present", they as well as Joinson either must have "arrived sometime earlier undetected by surveillance," or they entered by another entrance. It goes without saying that to meet basic building and fire safety codes, Quonsets must have at least two entrances, one at either end. It is clear that police observers had only one end of the Quonset under surveillance, and that from a fixed point of view.

161.Constable SVENDSON is expected to further testify that during the day...NENASHEFF and ANDERSON then used a chainsaw to cut away portions of the squared logs in order to create rectangular compartments....

Note: The statement that Mr. Anderson "used a chainsaw" (an unsupported allegation repeated at para. 347) "to cut away portions of the squared logs in order to create rectangular compartments" is not said to be the observation of the constable, but is again conclusory in nature - mere speculation or surmise, at most an inference from which the Court is asked to draw yet another inference. It is submitted that this type of speculation taints the entire body of surveillance evidence presented in the record of the case by the requesting state and renders it unreliable.

162....Between 18:30 hours and 19:00 hours, the surveillance team observed Darrell ROMANO, NENASHEFF, ANDERSON. DJURACIC and Robert ROMANO depart 1110 Industrial Way....

163.These officers are expected to testify that the importance of these observations is that JOINSON, NENASHEFF, ANDERSON. DJURACIC and Robert ROMANO met at the Quonset building and created hollows in logs into which marijuana was later concealed and transported to the United States.

Note: This is again conclusory. All that can be said is that the five men met at the Quonset building. What they "created" and who did what is speculative since no observation was made of the alleged activities of the men in the Quonset building. The observers are drawing inferences, and now the Crown is asking the Court to draw further inferences from their inferences.

September 17, 2006 - Surveillance at the Quonset Building

Not only is there no evidence as to what was in the trailer, there is no evidence that Mr. Anderson had any knowledge as to what was in the trailer.

Note: the "discussion" with Darrell Romano took place four minutes after the police officer left. It is not specified whether Darrell Romano informed the men in the Quonset that the police had been by, nor whether that was the subject of the discussion. Nor is it specified who joined in the discussion or why. In particular, it is not specified that Mr. Anderson was anything more than a bystander.

Note: The men were outside for almost half an hour, from 12:07 to 12:34 p.m., consistent with a noon hour lunch break.

There is a subtle shift in identity here: whereas at noon Darrell Romano was outside, now Robert Romano is said to be outside, although the ROC says that he "again watched the roadway." Constable Pelegrin therefore appears not to be sure as to the identity of the persons he is observing. Again, Constable/Corporal Svendsen, not Constable Pelegrin, is said to have observed Mr. Anderson on September 16 and 17 (paras. 329, 347 and 348) and the apparent inconsistency is not explained.

181. Constable PELEGRIN is expected to further testify that at 16:34 hours, Darrell ROMANO, NENASHEFF and ANDERSON were inside the Quonset building. ANDERSON was operating a chainsaw and hammering was heard inside the structure.

Note: It is not stated from when to when Mr. Anderson was inside: it is a snapshot view of what the police believed to be the situation at 16:34 - presumably when there was a change of shift. The statement as to who was inside at that point is speculative. All that can be said is that Mr. Anderson was not seen exiting from the front door of the Quonset. Constable Pelegrin does not claim that he could see inside the Quonset, and does not explain how he could have observed Anderson (rather than someone else) operating a chainsaw. Note too the passive voice: the Constable is not expected to testify that he personally observed Mr. Anderson operating a chainsaw, but only that this was the state of affairs that he imagined or surmised.

This appears to be an attempt to implicate Mr. Anderson more deeply in the alleged activity than was actually observed. This allegation becomes entrenched in the ROC at paragraph 329, where again it is framed in the passive voice, but by a different officer: "Corporal SVENDSON can confirm and testify that Aaron ANDERSON was observed working with a chain saw at the Quonset building on September 16 and 17, 2006" (para. 347).

Note: the activities of the persons named are speculative; the contents of the U-Haul trailer is conclusory, drawn from interceptions that are not in evidence. Although they are presented as "observations" they are in fact inferences drawn by the officers based on other sources of information.

March 21, 2007 - Attempted Interview of Aaron ANDERSON

329. Constables Lindsay ELLIS and SVENDSON attended the Best Western hotel in Vernon and met with Aaron ANDERSON. ANDERSON was given an opportunity to attend the detachment voluntarily to speak with investigators regarding his involvement at the Quonset building and to watch a surveillance video. ANDERSON declined and presented his lawyer's business card to the officers. Constable SVENDSON identified ANDERSON as being at the Quonset building during surveillance on September 16 and 17, 2006. Constable SVENDSON also identified ANDERSON on the video tape that was taken during the surveillance. ANDERSON towed the U-Haul trailer which contained the marijuana.

Note: See note to paragraph 181. The reference to "the U-Haul trailer which contained the marijuana" is conclusory and, in this context, speculative, and should be ignored. Note too that here there is no reference to Mr. Anderson's having been "observed working with a chain saw," as later alleged at para.

No significance should be attached to Mr. Anderson's declining to speak with investigators and instead presenting them with his lawyer's business card.

March 26, 2007 - Attempted Interview of Kelly PARISI

330. Corporal LOUIE is expected to further testify that he telephoned and spoke to Kelly PARISI inviting him to come in for an interview regarding the whereabouts of his vehicle in September 2006. PARISI was the registered owner of the pick up that ANDERSON used to tow the U-Haul trailer and marijuana. PARISI could not recall where his vehicle was six to eight months ago and stated that he had been working in Alberta. PARISI stated he did not wish to provide a statement.

Note: Again, the reference to the pickup truck "that ANDERSON used to tow the U-Haul trailer and marijuana" is conclusory and speculative. There is no evidence to show what was in the trailer or that Mr. Anderson, as the driver of a pickup truck to which the trailer was attached, knew what was in the trailer.

Photo Identification of ANDERSON

346. Corporal MONTPETIT is expected to further testify that, on July 29, 2010, he served a Production Order on Jena WILSON at the offices of ICBC in Victoria and obtained the British Columbia driver's license photo of Aaron Randolph ANDERSON, which is attached hereto as Exhibit F.

347. Corporal SVENDSON is expected to further testify that on August 3, 2010, he viewed the British Columbia driver's license photograph of Aaron Randolph ANDERSON, attached as Exhibit F, and confirmed that the photograph depicted the same individual he observed on surveillance on September 15, 16, 17 and 18, 2006, associated to British Columbia license 606 GRD. Corporal SVENDSON can confirm and testify that Aaron ANDERSON was observed working with a chain saw at the Quonset building on September 16 and 17, 2006.

Note: It is stated that "Corporal SVENDSON" - not Constable Pelegrin - "observed" Mr. Anderson "on surveillance on September 15, 16, 17 and 18, 2006"; it is not explained how Corporal SVENDSON can testify that "Aaron ANDERSON was observed working with a chain saw" (note the passive voice - implying that he did not make the observation) on September 16 and 17 (i.e., not on September 15 or 18).

348. Corporal SVENDSON is expected to further testify that on March 21, 2007, he attended the Best Western hotel parking lot in Vernon and met with Aaron ANDERSON. ANDERSON declined an opportunity to provide a statement based on his legal counsel's advice. ANDERSON verbally identified himself to Corporal SVENDSON and provided him with his address and phone number. Corporal SVENDSON can confirm that the person who identified himself as Aaron ANDERSON to him, is the same person he viewed in the British Columbia driver's license photograph, attached as Exhibit F, on August 3, 2010.

ARGUMENT

1. Mr. Anderson challenges the sufficiency of the evidence presented in the ROC and its supplements to meet the test for committal under section 29(1)(a) of the Extradition Act. There is no evidence that HE consciously trafficked in marijuana or was engaged in a conspiracy to do so. Furthermore, there is no evidence that he had knowledge and control over the contents of the logs or their origin or eventual destination. In particular, there is no evidence that Mr. Anderson or Mr. Romano knew the eventual destination of the logs outside Canada.
2. The investigation into and surveillance of Mr. Anderson's alleged activities occurred entirely within Canada. All of the alleged conduct, including any elements of the offences for which extradition is sought, were completed entirely within Canada. Mr. Anderson submits that there is no real or substantial connection between him and the allegations against him, and the requesting state, United States of America.
3. It is submitted that in the absence of a real and substantial connection between Mr. Anderson and his alleged activities on the one hand and the United States on the other, their committal should be refused.
4. The test to be applied is not merely whether the elements of section 5 of the Controlled Drugs and Substances Act and section 425 of the Criminal Code have been met, but whether the situation faced by Mr. Anderson would be criminal in Canada.
5. The question of where the offence occurred is fundamental to the test for committal in section 29(1)(a) of the Act, that is, whether a prima facie case has been established that the crime, if committed in Canada, would warrant committal for trial.

6. Section 29(1)(a) provides that the "judge shall order the committal of the person into custody to await surrender" if there is evidence of conduct that, had it occurred in Canada, would justify committal for trial in Canada". This language suggests that the conduct that forms the basis of the extradition request must occur outside of Canada in order to justify committal.
7. This traditional approach to extradition was first established by Duff. J. (as he then was) in 1905:

57 ... [I]f you are to conceive the accused pursuing the conduct in question in this country, then along with him you are to transplant his environment: that environment must. I apprehend, include, so far as relevant, the local institutions of the demanding country, the laws affecting the legal powers and rights, and fixing the legal character of the acts of the persons concerned, always excepting, of course, the law supplying the definition of the crime which is charged.

In Re Collins (1905), 10 C.C.C. 80 (emphasis added)

8. A significant part of the "environment" that is transplanted in the extradition process is whether the person sought could be prosecuted and convicted in Canada had he performed the same conduct (allegedly hollowing out logs and placing marijuana inside the compartments) entirely in the United States. The answer is No.
9. At the very least, section 29(1)(a) suggests that the extradition judge is empowered to consider where the offence occurred in determining the test for committal. If the offence occurred within Canada, the test for committal (i.e. "had it occurred") in section 29(1)(a) of the Act is rendered unworkable or nonsensical.
10. Parliament's choice to use the words "had it occurred" in section 29(1)(a) cannot simply be ignored. It is a fundamental principle of statutory interpretation that every word of a statute is presumed to have a role in achieving the objective of the Act. No word or provision should be interpreted so as to render it mere surplusage or ineffectual. *R. v. Katigbak*, [2011] 3 S.C.R. 326 at para. 59
11. In the wake of the Ferras case, in *United States v. Graziani*, 2007 BCSC, Mr. Justice Silverman held that it was appropriate for the extradition judge to now consider where the offence was committed and, if the offence was not committed in the requesting state, to potentially refuse the committal on that basis:

If there were no evidence of the accused being in possession in the United States I would address this jurisdictional issue. In my view, it is going to have to be reconsidered in view of the comments in Ferras about basic fairness and justice or rightness. (Para. 48)

12. In that case, the person sought was held to have knowledge and control of the drugs in the United States, and on that basis the person sought was deemed to have committed an offence in the United States. That is not the case here. Although it is alleged that Mr. Anderson committed the offence of trafficking in marijuana in the United States, there is no evidence that either of them was in possession, constructive or otherwise, of marijuana in the United States.
13. In order for Mr. Anderson to have knowledge and control of the marijuana in the United States, it must be demonstrated that he knew the destination of the logs and deliberately involved himself in criminal activity in a foreign state.
14. It is alleged that Mr. Anderson drove a truck and trailer to a Quonset shed presumably to make a delivery. It is speculation to say that the trailer contained marijuana or that Mr. Anderson knew what was in the trailer - especially in the absence of detail about the Quonset shed and what was in it prior to Mr. Anderson's arrival. It is not known, for example, whether the marijuana eventually discovered in the modified logs was already in the Quonset hut or its cellar. Nor is it known whether the equipment used to modify the logs was already in the Quonset hut or arrived in the trailer. The evidence is too speculative to be adequate for a jury to decide. No properly instructed jury could find Mr. Anderson guilty on this evidence.
15. Given the significant deprivation of liberty involved, there is considerable injustice and unfairness in extraditing anyone, especially a Canadian citizen, out of the country where he enjoys the protection of the Charter to an alien land to which he has no connection.

The limited judicial discretion to keep evidence from a Canadian jury does not have the same negative constitutional implications as the removal of an extradition judge's discretion to decline to commit for extradition. In the latter case, removal of the discretion may deprive the subject of his or her constitutional right to a meaningful judicial determination before the subject is sent out of the country and loses his or her liberty. Ferras, para. 47

16. McLachlin C.J.C. added:

I conclude that to deny an extradition judge's discretion to refuse committal for reasons of insufficient evidence would violate a person's right to a judicial hearing by an independent and impartial magistrate - a right implicit in s. 7 of the Charter where liberty is at stake. It would deprive the judge of the power to conduct an independent and impartial judicial review of the facts in relation to the law, destroy the judicial nature of the hearing, and turn the extradition judge into an administrative arm of the executive. The process of assessing whether all the boxes are ticked and then ordering committal is not an adjudication, but merely a formal validation. In so far as the majority view in the pre-Charter case of Shephard suggests a contrary view, it should be modified to conform to the requirements of the Charter. Ferras, para. 49

17. The extradition judge has discretion to refuse to extradite on insufficient evidence "such as where the reliability of the evidence certified is successfully impeached...." (para. 50). Challenging the justification for committal includes "making arguments on whether the evidence could be believed by a reasonable jury" (para. 54). Where such an argument is raised, "an extradition judge may engage in a limited weighing of evidence to determine whether there is a plausible case...."

[T]he extradition judge looks at the whole of the evidence presented at the extradition hearing and determines whether it discloses a case on which a jury could convict. If the evidence is so defective or appears so unreliable that the judge concludes it would be dangerous or unsafe to convict, then the case should not go to a jury and is therefore not sufficient to meet the test for committal. (Para. 54)

18. The principles of fundamental justice, as articulated in Ferras, require a meaningful judicial determination of whether the actions of the persons sought disclose a "real and substantial connection" to the requesting state. Because there is no such link in this case, an order of committal should be refused. Larche, at paras. 58-62.
 19. Here, there are major gaps in the evidence.
 20. As the Crown has conceded, there is nothing inherently wrong or criminal in modifying logs in the way that they are modified here. Compared to solid logs, hollowed-out logs are obviously lighter and comparatively easy to work with; they can be used to run cable or pipes. As Daniel Wackerman is expected to testify, he set up his log home building business in California "thinking that he was starting a legitimate log home business that would be turning a profit" (ROC, para. 230).
 21. The neatness of the logs shown in the photograph in the Supplemental Record of the Case is indicative of care taken to shape the logs so that they can be used in construction. There is nothing in the ROC to say that the 13 shipments of logs were not used for this purpose. Further, it is misleading for counsel for the United States to say that "the hollows in the logs appeared to have been shaped specifically to fit the rectangular packages of marihuana" (Crown's submissions, para. 83); from the photographs it is clear that the logs were of different sizes and the hollowed out sections were of different depths, consistent with the capability of a chainsaw to cut in straight lines rather than to cater to the size or shape of the packages that the logs eventually contained.
 22. It is submitted that much of the Canadian evidence led by the Attorney General is exaggerated or speculative, or inferential, and is therefore inadmissible. In *United States of Toren*, Willcock J. (as he then was) stated,
- [24] ...[W]here, as here, the Record of the Case includes inadmissible Canadian evidence and where that evidence appears to be the only evidence of a specific victim in the requesting state, I am unable to say the prosecuting authorities have certified the case on available evidence.

- [25] In *United States of America v. Ferras*; *United States of America v. Latty*, 2006 SCC 33, the Supreme Court of Canada observed that by certification of the record, the requesting state provides its good word that the evidence meets the requirement set out in s. 33(3), namely that the facts described can be proven by available evidence, and if those facts are proven, that will be sufficient to establish criminality and the jurisdiction of the requesting state. Where the representations are unequivocally made, an extradition judge cannot look behind those representations, but where they are unclear or inadequate, an extradition judge should not attempt to fill in the blanks or measure the effect of those inadequacies. *United States of America v. Toren*, [2012] B.C.J. No. 2309
23. Much of the evidence against Mr. Anderson, including statements that he was observed operating a chain saw, is unattributed. As Willcock J. noted in *Toren*, "In *Danielson v. Canada*, 2008 BCCA 519 at para. 39, the Court states that unattributed evidence can be given no weight at an extradition hearing.
- [43] In *Ferras*, the Supreme Court of Canada held that the summary proof of the case of the requesting state by certification of the record of the case would not amount to a breach of Charter rights to due process because the extradition judge engages in a judicial determination on facts and evidence. In doing so, the court described the effect of the statutory presumption arising from certification.
- [44] The court reviewed the state of the law at para. 40:
- 40 On this view of the law, the combined effect of the relevant provisions (ss. 29, 32 and 33 of the Act) may be to deprive the person sought of the independent hearing and evaluation required by the principles of fundamental justice applicable to extradition. If the extradition judge possesses neither the ability to declare unreliable evidence inadmissible nor to weigh and consider the sufficiency of the evidence, committal for extradition could occur in circumstances where committal for trial in Canada would not be justified.
24. Willcock J. went on to cite paragraphs 41, 46, 52-53, and 55-56 of *Ferras* and concluded:
- [51] I am satisfied the persons sought have now raised a sufficient challenge to the reliability of the certification of the case to cause me to be unable to say that it is just to order their committal for extradition.
- [54] If we are now to extradite the two persons sought to the United States to face trial, it cannot be as a result of mere demand or surmise. It must be the result of a meaningful judicial process. The case presented to me, in my view, does not now justify a committal.
25. With great respect, the evidence against Mr. Anderson is insufficient to justify extradition to the United States on such serious charges - charges which even here in Canada can garner a maximum sentence of life imprisonment. A jury, properly instructed, could not reach a verdict of guilty on these slight facts. There is an absence of proof of mens rea. As McLachlin C.J.C. noted, in *Ferras*, citing clause 39 of the Magna Carta (1215):

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals, or by the law of the land." Ferras, para. 19

26. McLachlin C.J.C. noted with respect to justifying a committal for extradition, "Most fundamentally, it depends on a judicial process conducted by a judge who has the discretion to refuse to commit the subject for extradition on insufficient evidence" (para. 43). She added:

Section 29(1)'s direction to an extradition judge to determine whether there is admissible evidence that would "justify committal" requires a judge to assess whether admissible evidence shows the justice or rightness in committing a person for extradition. It is not enough for evidence to merely exist on each element of the crime. The evidence must be demonstrably able to be used by a reasonable, properly instructed jury to reach a verdict of guilty. If the evidence is incapable of demonstrating this sufficiency for committal, then it cannot "justify committal".

Ferras, para. 46

27. This is applicable not only with the offence of trafficking but also with the offence of conspiracy. In *J.F. v. B.C. Civil Liberties Association*, [2013] 1 S.C.R. 565, Moldaver J. for the Court clarified that a broad approach to conspiracy is inappropriate and that liability as a party to a conspiracy is limited to cases where the accused laid or abets the initial formation of the agreement, or aids or abets a new member to join a pre-existing agreement: aiding or abetting the furtherance of the unlawful objet does not establish aiding or abetting the principal with any element of the offence (see gloss on s.465 of Martin's Criminal Code 1914, at p. 858:
- [42] That brings me to the broader approach endorsed in *McNamara* and the central issue in this appeal - namely, whether party liability can attach to someone who knows of a conspiracy and who does (or omits to do) something for the purpose of furthering its unlawful object.
- [42] With respect to those who hold a different view, I have concluded that it should not. Party liability should be restricted to conduct that aids or abets for formation of the agreement that comprises the essence of the crime of conspiracy. In all other cases, a conviction for conspiracy will not lie absent proof of membership in the conspiracy.
- [43] As I have explained, agreement is a central element to the offence of conspiracy. Conversely, an act done in furtherance of the unlawful object is not an element of the offence of conspiracy. Although such acts can serve as circumstantial evidence to support the existence of a conspiracy, they are not themselves a component of the actus reus of conspiracy....
28. Moldaver J. added at paragraph 45: "Aiding or abetting the furtherance of the unlawful object does not establish aiding or abetting the principal with any element of the offence of conspiracy. It cannot ground party liability for conspiracy.

[46] The conclusion I have reached is consistent with the following observation from a Harvard Law Review article, with which I agree:

But to aid and abet a crime it is necessary not merely to help the criminal, but to help him in the commission of the particular criminal offense. A person does not aid and abet a conspiracy by helping the "conspiracy" to commit a substantive offense, for the crime of conspiracy is separate from the offense which is its object. It is necessary to help the "conspiracy" in the commission of the crime of conspiracy, that is, in the commission of the act or agreement. Only then is it justifiable to dispense with the necessity of proving commission of the act of agreement by the defendant himself. In all other cases, to convict the defendant of conspiracy it is necessary [to prove] not only knowledge on his part that he was helping in wrongful enterprise, but also knowledge on another's part that he intended to do so, and at least a tacit agreement to give and accept such help. [Emphasis that of Moldaver J.]

29. The Supreme Court of Canada concluded at para. 63: "To sum up, party liability to a conspiracy is limited to cases where the accused encourages or assists in the initial formation of the agreement, or when he encourages or assists new members to join a pre-existing agreement." Here, there is no evidence that Mr. Anderson acted in such a capacity. He was a mere functionary, whose duties at most included driving a truck and shaping logs. The main element of conspiracy is missing.
30. In *R. v. Grewall*, Romilly J. agreed with this analysis, stating, at para 45: "Any acts undertaken in furtherance of the commission of the crime and the commission of the crime itself do not form part of the conspiracy, but would be evidence of the conspiracy." He added:
- [55] Each member of the conspiracy must know the object of the agreement, i.e. the substantive offence to be undertaken. Recklessness as to any of the substantial elements of the offence will not suffice. *R. v. Grewall*, 2001 BCSC 48.
31. It is respectfully submitted that, where Mr. Anderson is concerned, the central elements of the offences are missing and there is insufficient evidence to justify committal. The evidence in the Record of the Case, as set out above, is woefully inadequate to support conviction on a charge that could garner life imprisonment in an alien prison system without recourse to the protections of the Canadian Charter of Rights and Freedoms. To commit Mr. Anderson for extradition to the United States on these facts would be neither just nor right.
32. Accordingly, it is respectfully submitted that he should be discharged.

H. Jamie Nenasheff

- [129] Mr. Nenasheff first addresses the ROC at para. 350 to correct the statement regarding the dates of the surveillance at the Workshop. He was seen there only on September 16 and 17, and not on September 15 as stated. On September 18 he was seen at the Firehall property in the early morning. Further, the query of his Driver's Licence was done after the surveillance on July 29, 2010, rather than in 2006.
- [130] There is not sufficient evidence to commit Nenasheff. There is not an evidentiary foundation for the inference of knowledge sought by the AGC.
- [131] Although there were other persons sought at the Workshop when the U-Haul trailer arrived, Nenasheff was not present until two hours after it left. There is no evidence of the duration of R. Romano's look-out on the driveway after the U-Haul left. He submits that the inference that there was marihuana in the U-Haul is not a reasonable inference.
- [132] Further and most importantly, there is no evidence regarding the total number of logs at the Workshop. There is therefore no continuity to show that the logs that Nenasheff was working on are the same logs that are then loaded onto the flat-bed truck, taken to the Firehall property and then loaded onto the truck bound for California.
- [133] Nenasheff relies on Diab and says that, as in that case, it would be unsafe or dangerous to convict on this evidence, and that the evidence is therefore not sufficient for committal.
- [134] With regard to the submissions made by the Persons Sought, I first note that the AGC is not relying on the impugned conclusory statements.
- [135] The matters addressed by the Persons Sought include significant issues raised throughout these proceedings. Those issues include the territorial question of offences not committed in the Requesting State; the non-applicability of the Charter to an offence tried outside of Canada; the delay in bringing this matter to hearing and the resulting prejudice; the disclosure sought, particularly the Affidavits and Authorizations for the wiretap evidence; and, the sufficiency of the evidence to support the inferences sought by the AGC, particularly the inference of knowledge. As I indicated at the conclusion of the Reasons for the group of five persons sought, their submissions may well raise a reasonable doubt at a trial. However, at this committal hearing the judge must conduct only a limited weighing of the evidence in determining the reasonableness of the inferences sought.

V. IDENTIFICATION - EVIDENCE AND DISCUSSION

- [136] As outlined in Danielson at para. 24, the two aspects of identification which must be satisfied are:
- (a) On a balance of probabilities, is the person before the court the person named in the Record and sought by the United States; and

- (b) Is there a prima facie case that the person before the court is the person who engaged in the conduct which is alleged in the evidence?

A. Identification Issues

[137] Neither aspect is admitted by Fraser and Ferguson. Joinson admits that the threshold for identification is met. Admissions were filed by D. Romano, R. Romano, Djuracic, Anderson and Nenasheff in which they admit that they are the persons sought by the Requesting State.

1. Identification as the Persons Named in the ROC

[138] The Record sets out the particulars of Fraser, Ferguson and Joinson at page 72 of the ROC. Photographs are attached to the ROC which were amended in the 4SROC. The basic information as amended is as follows:

- (a) Shane Donald Fraser: Date of birth June 18, 1966, Exhibit A;
- (b) Todd Ian Ferguson: Date of birth April 19, 1968, Exhibit C as amended; and
- (c) Daniel James Joinson: Date of birth January 29, 1976, Exhibit B as amended.

[139] The R.C.M.P. officers who arrested Fraser, Ferguson and Joinson testified. The officers identified in court each of those persons sought as the individuals who they arrested on extradition warrants. Their in-court identification matched the photographs as amended by the 4SROC.

[140] At the time of each arrest, the officers confirmed the name and birthdate of the person arrested. They are the same names and birthdates as set out in para. 72 of the ROC. The officers each had a photo of the person to be arrested and compared the photographs to the person arrested. In the case of Ferguson, the photo was noted as being dated. Photo identification of Ferguson and Joinson was obtained from the person and matched to him at the time of arrest. Fraser confirmed his name and birthdate.

[141] I have compared the photographs in the ROC as amended by the 4SROC, and noted the physical characteristics of Fraser and Ferguson in the courtroom. Although the photograph of Ferguson is especially dated, having been taken for his Driver's Licence in 2006, the photographs of the two persons sought are likenesses of Fraser and Ferguson.

[142] I am satisfied on a balance of probabilities that Fraser and Ferguson are the persons named in the Record and sought by the Requesting State. With the admissions of Joinson, D. Romano, R. Romano, Djuracic, Anderson and Nenasheff, I am satisfied that the first branch of the test for identification is met for the Persons Sought. The persons before the court are the persons named in the Record.

B. Identification as the Persons Who Engaged in the Alleged Conduct

[143] The Persons Sought were identified in the Record by RCMP officers who compared their surveillance observations to B.C. Driver's Licence ("BCDL") photographs obtained from the Insurance Corporation of British Columbia through judicially authorized production orders. The eight BCDL photos are attached to the Record as exhibits.

[144] Although there are some inconsistencies in certain characteristics, such as the height of Ferguson, the evidence supports a finding that the persons named in the Record as the Persons Sought be identified as the persons who are before the court. I have visually compared the eight Persons Sought in the courtroom and am satisfied of their identity as indicated by the photographs in the Record. In order to satisfy the second branch of the test for identification, there must be a *prima facie* case that the persons before the court engaged in the conduct set out in the Record.

1. The Fourth Supplemental Record of the Case

[145] When referring above to the photographs attached as exhibits to the ROC as amended by the 4SROC, the issue of the reliability of the photographs and evidence dependent upon those photographs was raised by Ferguson.

[146] On February 6, 2015 the 4SROC was filed by the Requesting State. In essence, it states that the photos of Ferguson and Joinson were transposed in the exhibits to the ROC. Joinson does not take issue with the evidence affected by the photograph of him being switched with the photo of Ferguson in the ROC.

[147] The 4SROC is a one-page document with four exhibits attached. The relevant paragraphs of the 4SROC are:

2. For clarification, in reference to Exhibit B and Exhibit C of the original Record, the two photos were inadvertently transposed. Exhibit B is a photograph of Daniel James JOINSON and Exhibit C is a photograph of Todd Ian FERGUSON. The witnesses presenting the identification statements in the original Record identified the correct photographs. Dan WACKERMAN, whose identification of FERGUSON is presented in paragraph 230 of the original Record, identified the photograph of FERGUSON. Constable POLLARD, whose identification of FERGUSON is presented in paragraph 338 of the original Record, identified the photograph of FERGUSON. Corporal DINNEN, whose identification of JOINSON is presented in paragraph 340 of the original Record, identified the photograph of JOINSON. Paragraph 337 of the original Record establishes how Corporal PAUL obtained the photograph of FERGUSON, and paragraph 339 establishes how Constable HELGESON obtained the photograph of JOINSON.

3. I have attached the following exhibits to this Fourth Supplemental Record of the Case:

Exhibit A is FERGUSON's booking photograph taken incident to his arrest in Canada on the extradition warrant on December 5, 2012. This photograph was provided by Canadian authorities to the U.S. Department of Justice -- Office of International Affairs, who subsequently provided it to me on February 6, 2015.

Exhibit B is JOINSON's booking photograph taken incident to his arrest in Canada on the extradition warrant on December 4, 2012. This photograph was provided by Canadian authorities to the U.S. Department of Justice -- Office of International Affairs, who subsequently provided it to me on February 6, 2015.

Exhibit C is the photograph of FERGUSON identified by Dan WACKERMAN and Constable POLLARD and labeled as Exhibit C in the original Record.

Exhibit D is the photograph of JO1NSON identified by Corporal DINNEN and labeled as Exhibit B in the original Record.

[148] The first branch of the test for identification is not affected by the 4SROC. The comparison and matching of the correct photograph by the arresting officer on arrest and in court, and the in-court likeness of Ferguson to the amended exhibit are consistent. However, Ferguson says that the evidence in the Record which is dependent upon him being identified as the person who engaged in the conduct which forms the basis of the charges against him cannot be relied upon without relying on the possibly unreliable photo upon which the witnesses based their identification of him.

[149] I have considered the submissions on behalf of Mr. Ferguson and the AGC, and reviewed the evidence in the Record.

[150] To the extent that the drafting of the 4SROC could have been clearer and contained information regarding the transposing of the photographs and the discovery of the error, I agree with Mr. Ferguson.

[151] However, the proposition that the Record is presumed reliable is the response to these submissions. Brief though it is, the 4SROC addresses the error made with the photographs and the effect on the Record. On review, this error does not make the Record manifestly unreliable. The identification evidence in the ROC, particularly the evidence of Wackerman, is corrected by the 4SROC, and can be considered in its corrected form: s. 33(5) of the Act. The photograph in the corrected Record is the photograph of Ferguson. Its identification by Wackerman and by Constable Pollard forms part of the evidence relied upon by the AGC.

2. The Conduct Alleged

[152] For the purposes of this hearing, the evidence set out below as it refers to Ferguson as well as the other persons sought is sufficient to establish that the person before the court is the person alleged to have engaged in the conduct set out in the Record.

[153] Each of the Persons Sought was identified by RCMP officers who compared their surveillance observations to BC Driver's Licence ("BCDL") photographs obtained from the Insurance Corporation of British Columbia through judicially authorized production orders. The BCDL photos are attached to the ROC as exhibits depicting the Persons Sought. Witness evidence also identifies some of the Persons Sought as being involved in the criminal conduct.

[154] A summary of the identification evidence for the group of five of the persons sought is as follows:

Person Sought

Identification Evidence

Darrell Romano

Corporal Pelegrin views BCDL photo of Darrell Romano, which is Exhibit D to ROC, and confirms it depicts the same individual he observed on Sept. 15, 16 and 17 2006.

Robertson identified Darrell Romano as Curtis Wallace from a photo in a photo pack line-up. The photo is Exhibit D to the ROC.

Robert Romano

Corporal Pelegrin views BCDL photo, which is Exhibit E to the ROC, and confirms it depicts the same individual he observed on surveillance at the Workshop on Sept. 16 & 17, 2006.

Anderson

Corporal Svendsen views BCDL photo, which is Exhibit F to the ROC, and confirms it depicts the same individual he observed working at the Workshop on surveillance Sept. 15, 16, 17 & 18, 2006.

On March 21, 2007 Anderson verbally identifies himself to Cst. Svendsen in Best Western parking lot.

Nenasheff

Corporal Svendsen views BCDL photo and confirms it depicts the same individual he observed working at the Workshop on surveillance Sept. 15, 16, 17 & 18, 2006.

On March 20, 2007, Nenasheff verbally identified himself to Corporal Svendsen when given an opportunity to provide statement. He was the same person Svendsen viewed in the BCDL photo attached as Exhibit G to the ROC.

Djuracic

Corporal Svendsen views BCDL photo and confirms it depicts the same individual he observed working at the Workshop on surveillance Sept. 15, 16 & 17, 2006.

On January 23, 2007 Djuracic identified himself to Constable Svendsen during an interview. He was the same person Svendsen viewed in the BCDL photo which is Exhibit H to the ROC.

[155] A summary of the identification evidence of Fraser, Ferguson and Joinson is as follows with references to the 4SROC where applicable:

Person Sought

Identification Evidence

Shane Fraser

Physical Identification

On May 30, 2006 Fraser was seen by Cst. Pollock walking into Sussex Insurance in Duncan, B.C. Cst. Pollock saw Fraser leave Sussex Insurance and get in to his truck. Fraser was followed to Duncan Martial Arts Centre (owned by Fraser). Cst. Pollock saw Fraser speak to an unknown male who left a short time later. Cst. Pollock observed Fraser speak to another unknown male before Fraser left in his truck. When Fraser returned to the martial arts centre surveillance was terminated.

On May 30, 2006, Cst. Pollard viewed BCDL photo of Shane Fraser which is Exhibit "A" to the ROC, and confirmed it is the same individual he was observing on that day.

Dan Wackerman identified the photograph referred to as Exhibit "A" as a photograph of Fraser.

Voice Identification

May 31, 2006 (Call #1) Shane Fraser identified himself to Ferguson as Ferguson failed to recognize Fraser's voice at the beginning. Ferguson was "thrown off" as he had never talked to Fraser on the phone.

Cst. Pollard reviewed the all the interceptions referred to in the ROC and can identify Fraser talking to Joinson, Ferguson and McVittie. Fraser identified himself by name in intercepted calls and Cst. Pollard had several conversations with Fraser upon his arrest.

Todd Ferguson

Physical Identification

Cpl. Paul obtained BCDL photograph of Todd Ferguson which included his personal information.

On October 31, 2006, Cst. Pollard viewed BCDL photo of Todd Ferguson which is Exhibit C of the 4SROC and confirms it is the same individual he observed that day in a Starbucks coffee shop in Vernon.

Dan Wackerman identified the photographs which is Exhibit C of the 4SROC as a photograph of Ferguson, his contact in Canada

Voice Identification

On October 31, 2006, Cst. Pollard overheard Ferguson speaking to an employee of Starbucks in Vernon. Shortly after that Cst. Pollard had a short conversation with Ferguson. Cst. Pollard reviewed the intercepted communications referred to in the ROC and can identify Ferguson as talking to Fraser and Joinson.

Daniel Joinson

Physical Identification

August 22, 2006, surveillance of male identified as Joinson including concurrent intercepted call at the time he was being observed. Later in truck owned by Joinson.

August 25, 2006, truck registered to Joinson checked in unrelated roadside check. Licence and registration came back to the same individual who owned truck and was driving it.

On August 24, 2006, Cpl. Dinnen reviewed BCDL photo of Daniel Joinson which is Exhibit B of the 4SROC to the ROC and confirms it is the same individual he observed at locations Joinson went to while being intercepted. U-

Voice Identification

ID of "Pecs" as Joinson - On August 18, 2006, Cpl. Paul placed a call to "Pecs" at number 250-938-0675 (phone number at which Ferguson and Fraser reached "Pecs"). When a male answered Cpl. Paul asked to speak to "Tim". "Pecs" responded and said Paul had a wrong number and was speaking to Dan. Cp. Paul understood this to be Dan Joinson, but was not completely certain of this fact. This call along with a series of surveillance observations, allowed investigators to identify "Pecs" as being Daniel Joinson.

On January 24, 2008, Cst. Pollard reviewed all of the interceptions in the ROC and can identify Joinson talking to Ferguson and Fraser. Based on Joinson identifying himself in intercepted calls, being intercepted while under surveillance and being in described locations while under surveillance.

- [156] The evidence against the Persons Sought is primarily intercepted communications. The speakers during the intercepted communications were identified through self-identification on calls, by familiarity with their voices by other police officers, by identification of telephone ownership and usage and by concurrent surveillance to locations described in the calls. I am satisfied that that voice identification evidence is sufficiently reliable.
- [157] I am satisfied that this evidence establishes a prima facie case that the persons before the court were the persons who engaged in the conduct underlying the ATPs.

VI. ANALYSIS

- [158] The Requesting State seeks the extradition of all eight of the Persons Sought. At times the proceedings involved all of the persons sought on a common issue; or a group of five persons; or a group of three of the persons sought; or at times one individual's application. Ultimately though, in this hearing eight decisions are required after completing a limited weighing of the evidence for each of the eight persons sought. Due to the commonalities in the evidence, the decisions for the five individuals were given on April 8, 2015, and on April 10, 2015 for the three remaining persons sought - Fraser, Ferguson and Joinson. In these Reasons, there will be a general discussion of the evidence as it affects all eight, the group of five and the group of three, and discussions of the evidence as set out above for each of the eight persons sought. Where the singular is used in describing the case, the plural is intended to reflect the fact that eight extradition hearings are being decided.
- [159] An extradition judge must first decide what evidence is admissible and then whether that evidence justifies committal. The test that must be applied is found in s.29(1) of the Act: committal shall be ordered if there is evidence admissible under the Act of conduct that, had it occurred in Canada, would justify committal for trial in Canada on the offences set out in the authority to proceed. There is also an identification requirement, as discussed above.
- [160] In this case there is not an issue regarding the admissibility of evidence. The evidence before the court is the evidence tendered by the Requesting State in the form of the Record of the Case and the four Supplemental Records of the Case (referred to above as the Record) each of which has been certified pursuant to s. 33(3) of the Act. The Record and each of the supplemental records are admissible pursuant to s. 32(1)(a) of the Act. Since the Record is certified, there is a presumption that the summary of the evidence in the Record is reliable: Ferras at paras. 50 and 52.
- [161] There are two other groups of evidence relied upon by the AGC. The first is the Admissions regarding the identity of D. Romano, R. Romano, Djuracic, Anderson and Nenasheff. The second is the identification evidence regarding Fraser, Ferguson and Joinson; specifically, this is the viva voce evidence of the arresting officers, the fingerprint identification and prisoner report of Fraser, the fingerprint identification, driver's licence and medical care card of Ferguson, and Joinson's driver's licence.

- [162] None of the Persons Sought have tendered evidence.
- [163] In determining if the evidence justifies committal, in this hearing the issue is generally not whether the evidence is available or reliable, but whether it is sufficient. The submissions of each of the Persons Sought addressed sufficiency. They submit that there would not be sufficient evidence to put them on trial if these allegations were prosecuted in Canada. In addition, Ferguson says that in his case the identification evidence is unreliable.
- [164] On behalf of the Requesting State, the AGC says that it is important to apply the correct test which is not whether the persons sought would be proven to be guilty, but the lesser standard of whether there would be enough evidence to put them on trial in Canada. It is not for this court to determine guilt or innocence.
- [165] In reviewing the evidence for sufficiency, I am instructed by Ferras and Graham, which both advocate a holistic appraisal of the whole of the evidence. I must look at the whole of the admissible evidence and determine through the lens of judicial experience whether the evidence is demonstrably able to be used by a reasonable, properly instructed jury to reach a verdict of guilty: Graham at para. 31.
- [166] When performing this limited weighing, it is not necessary or permissible to review and compare individual pieces of evidence against each other for their reliability: Chao at para. 13; and Bennett at paras. 23-26. However, this does not mean that evidence against one person sought should be viewed in isolation from the evidence against the others. The evidence in an extradition case must be viewed holistically, and in an extradition case in which conspiracy is alleged, this requires the court to look holistically at both the individual conspirators' actions and the larger conspiracy.
- [167] Because of the multiple persons sought for extradition and their different roles and conduct in the larger conspiracy that is alleged, it is necessary to perform a limited weighing of the evidence. Simply put, it would be impossible to assess the evidence against each individual without comparing it to the other evidence against the group. Accordingly, when reviewing the sufficiency of the evidence against each individual conspirator, the court must perform a limited weighing to consider the evidence against that individual, considering the evidence of the larger conspiracy, is sufficient evidence upon which a reasonable jury properly instructed could return a verdict of guilty for that individual: Ferras at para. 9.
- [168] This limited weighing is especially difficult in a case involving an alleged conspiracy, where much of the evidence will usually be circumstantial. In that limited weighing, the judge is to assess the reasonableness of the inferences sought to be drawn from the circumstantial evidence. Specifically, this analysis asks whether the prosecution relies on reasonable inferences or whether the leap of logic is so large that it would be a dangerous or unsafe basis for a conviction.

[169] It is not the role of the extradition judge to choose between competing inferences. If there are multiple inferences and one of those inferences supports committal, that is sufficient for committal: Hislop at para. 31.

[170] I turn now to the evidence in this case.

A. The Conduct Corresponds to the Offences in the ATP

[171] The question for the court is whether the conduct described in the Record establishes a prima facie case that each of the Persons Sought committed the offences of trafficking and conspiring to traffic in marihuana. I would answer that in the affirmative for the reasons that follow.

[172] To begin, the Record discloses evidence that there existed a conspiracy to traffic in marihuana and that the persons involved in this conspiracy did in fact engage in the trafficking of marihuana. On the evidence as a whole I find that a prima facie case is made out that the eight Persons Sought were members of a conspiracy to traffic marihuana and trafficked in marihuana.

[173] Firstly with regard to Fraser, Ferguson and Joinson, the intercepted calls and the surveillance either plainly or by inference demonstrate that they were involved in a marihuana smuggling conspiracy. This evidence also connects this conspiracy to specific marihuana shipments intercepted in the United States.

[174] The communications among Fraser, Ferguson and Joinson show that the three of them, along with various other unknown persons, agreed to and did coordinate the plan to gather marihuana and transport it to the Quonset hut where it was placed in modified logs. Those logs were then shipped to California in September 2006. The shipment was under surveillance from the time the logs were prepared to the filling of the logs and the arrival of the shipment of marihuana-filled logs to California when received by Wackerman.

[175] From the eventual seizure of the marihuana inside those logs it is a reasonable inference that the conspirators' intention was to conceal and transport a controlled substance. The intercepted telephone communications before and after September 16 and 17 are an indication of their knowledge of the plan to stuff the logs with marihuana and transport them to California.

[176] The seized marihuana weighed approximately 735.2 lbs including packaging. The large size of this marihuana shipment and the distance it travelled are capable of leading to a reasonable inference that the conspirators did not intend for this marihuana to be for personal use. It could also support an inference that the conspirators intended to deliver, sell or otherwise transfer it to other persons for their use.

[177] The Record indicates that Fraser, Joinson and Ferguson all participated in the implementation of this planned shipment. Acts were done by each of them in furtherance of the unlawful common plan. Fraser collected money and met with Joinson. Fraser and

Ferguson organized the marihuana. Joinson obtained the crew to prepare the logs. Ferguson communicated with people in California. Ferguson is also the person who advised the others in the organization on September 25, 2006, that "things were not alright" with this shipment after Wackerman's arrest.

- [178] I have reviewed the evidence of the intercepted phone calls. While some of them individually are capable of other innocent inferences, taken as a whole, the evidence is reasonably capable of supporting the inferences of knowledge and agreement necessary for a guilty verdict on the charge of conspiracy. Together with the alleged conduct described above, these inferences are reasonably capable of supporting a conviction for trafficking in marihuana.
- [179] I am satisfied that the phone calls attributed to Ferguson possess sufficient reliability. The voice identification evidence set out in the Record together with the other evidence regarding Ferguson, which will of course be tested at trial, does not make it unsafe to commit him for trial.
- [180] The other evidence includes that Wackerman states that Ferguson suggested the log home building business. Wackerman began receiving shipments of logs containing Marihuana in the spring of 2006. Ferguson was Wackerman's contact in Canada. When Wackerman needed help processing the logs he spoke to Ferguson. When Wackerman was arrested, he told Schaeffer to contact "Todd" to advise the operation was compromised. Ferguson later told other members of the group that something had gone wrong.
- [181] In July and August 2006 there were intercepted calls between the three members of the conspiracy, Fraser, Joinson and Ferguson discussing a shipment of marihuana which took place that August. The shipment successfully left British Columbia and arrived in the United States. Ferguson commented in a conversation with Joinson on August 28, 2006 that "Another one bites the dust", which infers that there were earlier shipments of marihuana that had been successfully completed by these persons sought.
- [182] The offence of trafficking is made out when drugs are possessed with intent of making them available to others. Considering the evidence as a whole, it is capable of supporting the inference that over 700 pounds of marihuana were sent from Canada to the United States with the intent of making the marihuana available to others. Possession is established by the inferences that they knew of the marihuana which was under their direction and control.
- [183] The intercepted conversations of Fraser, Ferguson and Joinson, the surveillance of them and the statement of Wackerman are capable of supporting the inference that they had the requisite knowledge to found a conviction for their involvement in the trafficking in marihuana and conspiracy to traffic in marihuana.

[184] Although Fraser, Ferguson and Joinson did not physically deliver the marihuana to the United States, that is not determinative of the charge of trafficking. The three of them, I infer, were the "directing minds" over the individuals who packaged and transported the marihuana. If accepted, the evidence indicates that each of them performed acts that assisted in the completion of the trafficking:

- (a) Fraser's role in gathering the funds to pay the expenses of the operation;
- (b) Fraser and Ferguson gathering the marihuana;
- (c) Joinson's organization of the crew that prepared and stuffed the logs, and his attendance at the Quonset hut with the U-Haul;
- (d) Joinson's arranging to take marihuana to the preparation site;
- (e) Ferguson's arrangements for the destination site, keeping track of the load going to the U.S. and confirming the arrival of the marihuana in California.

[185] From the evidence of the surveillance of the logs from the Workshop, to their delivery in California, I have concluded that a prima facie case is also made out that each of Anderson, D. Romano, R. Romano, Djuracic and Nenasheff were members of the conspiracy and were parties to the offence of trafficking a controlled substance.

[186] Each of these persons actively participated in the process of modifying the logs to make storage compartments which were then filled with marihuana and prepared them for shipping. While there was no surveillance of the logs actually being filled with marihuana, while under constant surveillance logs were modified in a manner which would enable something to be stored inside them. There is a reasonable inference that they were filled and reassembled inside the Quonset hut. Ten logs were loaded on a truck and delivered to a site for pick-up by a transport company. After delivery the ten logs were found with rectangular hollows which appeared to be shaped to fit rectangular packages of marihuana found nearby. The packaging was clear and the marihuana was visible through the packaging.

[187] These facts support a reasonable inference that the logs were stuffed with marihuana in the Quonset hut on the weekend of September 16, 2006, while five of the persons sought were on the site and in the building. Therefore, it would be reasonable to infer that each of the persons was aware of the purpose of the modification of the logs, helped stuff the logs or was wilfully blind to that process. The Record indicates that each performed actions which, at a minimum, aided in the commission of the offence of trafficking.

[188] I note that the AGC is not relying on the entirety of the Record for the committal of the group of five persons sought. Some evidence has been deleted or disavowed, including some wiretap evidence, the statements of Djuracic and D. Romano, and conclusory statements such as that the U-Haul trailer contained marihuana.

- [189] Detail regarding the Quonset hut or Workshop is lacking. Its dimensions are not specified. However, it is apparent that it is large enough for the logs to be taken into the Workshop, and large enough for the U-Haul trailer to be driven in.
- [190] The location of the surveillance officers is not specified, nor need it be. The Record is clear as to what was observed inside the Quonset hut and what was heard (see for example para. 168 of the ROC). That the door was large enough to accommodate machinery and vehicles indicates that the surveillance officers had a decent ability to make observations into the Quonset hut. When the officers could not see, they note "out of sight" in the Record.
- [191] The Record indicates that the five Persons Sought had different degrees of involvement. The evidence implicating them is primarily of their surveillance on three days - September 16, 17 and 18, 2006. The location of the surveillance was mostly at the Quonset hut at 1110 Industrial Way, Armstrong, B.C. Observations made by the officers are set out in some detail above. It is noted that the only individuals seen at the Quonset hut on those days were the five persons sought and Joinson. Their involvement can be summarised as follows.
- [192] D. Romano was present at the Quonset hut on both September 16 and 17. On September 17, he stood outside after the U-Haul departed watching the road. An inference could reasonably be made that this watching was for the purpose of guarding the contents of the Quonset hut to which marihuana had been transported. That inference is supported by the fact that after an unrelated RCMP vehicle attended, the others exited and carried on an animated conversation.
- [193] D. Romano is alleged to be the "Curtis Wallace" who also provided shipping documents for the logs to the trucker. I find that the evidence, particularly the Identification evidence, could reasonably support this inference. Again, it is not necessary that it be proven that D. Romano is Curtis Wallace. That is for the ultimate trier of fact.
- [194] R. Romano was also present at the Quonset hut on both September 16 and 17. The surveillance indicates that he was there from 10:31 a.m. to approximately 6:30 p.m. on September 16, and from 8:45 a.m. to approximately 4:00 p.m. on the next day. On September 17 he drove with Djuracic in the flatbed truck onto which he had participated in the loading of the logs. Those logs had clearly visible slits from which indicates that they had been opened and put back together, which could support an inference of knowledge of the contents of those logs.
- [195] During the time that R. Romano was at the Quonset hut there was activity in which he participated, including hollowing out the logs. He also stood outside watching the road after the U-Haul departed.
- [196] Although there is no evidence of his involvement other than these three days, the evidence of his presence and his actions supports an inference that he had the requisite knowledge to be a member of the conspiracy as charged, and that he was a party to the trafficking offence.

- [197] Djuracic was present both days. He drove the flatbed truck with six logs, and then later with four more logs, and unloaded the truck with Dr. Romano. He used a chain saw to hollow logs. He was present when the U-Haul trailer arrived.
- [198] Anderson was also present at the Quonset hut on September 16 and 17 during the activity of hollowing out logs. He drove the U-Haul trailer into and out of the Quonset hut on September 17 accompanied by Joinson. For the reasons stated above, the evidence supports a reasonable inference that he knew that the trailer contained marihuana which was to be concealed inside the hollowed out logs.
- [199] Although Nenasheff was less involved and was not present when the U-Haul arrived, he was also present at the Quonset hut on both days during the activity of hollowing the logs. He drove the bobcat loader, and used a chainsaw. On September 17, he removed ten logs from the Quonset hut and loaded six onto the flat-deck truck. He later loaded more logs.
- [200] Considering all of the evidence, including direct evidence and the large amounts of circumstantial evidence, the Record is capable of supporting the following findings of fact and inferences:
- (a) D. Romano was in charge of the operation at the Workshop in the Quonset hut which concealed the marihuana in the logs. He was the contact with Joinson and made arrangements for shipping the logs containing the marihuana to California through his alias, Curtis Wallace, and Wallace Log and Timber;
 - (b) The ten logs discovered in California on September 22 were ten of the logs that had been modified at the Workshop on September 16 and 17. They were transported and delivered to Wackerman;
 - (c) The logs were modified at the portable sawmill on the property and taken inside the Workshop where ten of them were reconstructed. They were then loaded on the orange flat-deck truck and taken to the semi-trailer for transport. It is reasonable to infer that the marihuana discovered in the ten logs in California was put into those logs while they were in the Workshop that weekend and that the logs were reconstructed to conceal that fact;
 - (d) Each of the five persons sought was working at the Workshop on September 16 and 17 and took part in hollowing out the logs. It is reasonable to infer from their activities that each of them was aware that the logs were being modified to put something inside them;
 - (e) After the U-Haul arrived on September 17, 2006, it was backed into the Quonset hut. Shortly afterwards D. Romano stood outside watching the roadway. R. Romano later took watch of the roadway. This behaviour could be inferred to be a look-out to protect the Quonset hut, and this could be evidence of an awareness of and a fear of discovery of illegal activity going on in the Quonset hut, namely the stuffing of the logs with marihuana. This could also explain the "animated discussion" following an RCMP officer visiting the property.

- (f) The contents of the packages that were found in the logs were visible through the packaging. Together with the fact that the logs were being modified and reconstructed, presumably to avoid detection of the contents, it is reasonable to infer that the persons sought were aware that the contents of the logs were an illegal substance, in this case marihuana;
 - (g) Each of the persons sought was in the Workshop during some of the time that the logs were stuffed and reconstructed. It is reasonable to infer from their proximity that each of the persons sought had taken part in the process of stuffing and reconstructing the logs, or at least was aware of the fact that the logs were stuffed with marihuana. I conclude that if a person sought did not possess actual knowledge, they would be willfully blind as to the log-stuffing operation; and
 - (h) Each of the persons sought was working at the Workshop during the time when the ten modified, stuffed logs were put onto the orange flat-bed truck. They therefore knew that the logs and the marihuana inside them were being transported somewhere else. Given the volume of marihuana it is also reasonable to infer that this was a commercial operation, that the Persons Sought knew of the intention to transport for sale, and that they knew that the logs and concealed marihuana were being shipped to a customer elsewhere although they may not have known the destination.
- [201] The hollowing out of the logs, which is a fact proven on the evidence, is not by itself criminal. However, the sequence of events concluded with the ten logs being located in California with marihuana which fit inside the hollowed-out sections of the logs. In between those two events, the circumstances support the inference that the logs were hollowed for the purpose of and with the intent of stuffing them with marihuana for transport and sale.
- [202] It is not known how many logs were hollowed by the Persons Sought on September 16 and 17, or how many logs total were in the Quonset hut and the area around the Quonset hut. However, the evidence clearly indicates that some logs were squared off and hollowed during the time that the group of five of the Persons Sought were at the Quonset hut and participating in the activity.
- [203] The U-Haul trailer arrived at the Quonset hut and was driven into the Quonset hut after this activity. Later that day, September 17, ten logs were removed from the Quonset hut. Surveillance of the logs commenced. The Record is presumed reliable regarding evidence of continuity. From the Firehall property in Salmon Arm, B.C. to California the logs were observed until the marihuana was located after delivery.
- [204] It is a reasonable inference that the marihuana was placed in the ten logs when they were in the Quonset hut on that weekend. From that, I find that a jury could conclude that the element of knowledge is proven for the five Persons Sought. Although Nenasheff was not present when the U-Haul arrived, he participated in the transport of the logs later that day.

- [205] With regard to all five present at the Quonset hut, over two days the convergence of the arrival of the U-Haul trailer, its movements in and out of the Quonset hut, the watch kept by D. Romano (and then R. Romano), the exiting of the others after the RCMP car left and the heightened or animated nature of the conversation, support the inference that the U-Haul truck contained marihuana which was delivered to the Quonset hut. The fact that Joinson, who is one of the other three individuals subject to wiretap evidence, arrived at the same time as the U-Haul also supports the inference.
- [206] On the whole of the evidence, the activities of the five Persons Sought support an inference of their agreement to participate in the unlawful enterprise.
- [207] Knowledge of some of the object of the plan to transport the illegal drugs is sufficient to constitute the mens rea of the conspiracy offence: Trotter at para. 53. The evidence indicates that the group of five persons sought had the requisite mens rea to conspire to traffic in marihuana even if it does not indicate that they knew every element of the entire conspiracy. On the evidence, the summarized facts indicate that they were aware that they were assisting with the transportation of large amounts of marihuana. This is sufficient to indicate that they were sufficiently aware of the conspiracy to have the requisite mens rea even if they were not aware of the marihuana's ultimate destination.
- [208] I am further instructed by the case of the Supreme Court's discussion regarding conspiracy in J.F. The conduct of the Persons Sought gives rise to the inference that there was a meeting of the minds with regard to the common design to traffic marihuana (at paras. 52-54). A prima facie case is made out that there was a conspiracy and each person engaged in conduct to further the conspiracy's unlawful object was a member. That any of them did not know the ultimate destination of the marihuana or the other members does not affect this conclusion.
- [209] To the extent that knowledge must be inferred from the evidence, I find that this knowledge could be reasonably inferred from the evidence summarized in the Record, even though there may be weaknesses in that evidence. A helpful analogy can be drawn to Ontario Court of Appeal's decision in Diab. During the committal proceedings in that case, the extradition judge held that four of the five central pieces of evidence were insufficient to justify committal. However, the judge concluded that even though the fifth piece of evidence, a handwriting report, was suspect, it could not be rejected as manifestly unreliable and it tipped the balance in favour of committal (at para. 63). The judge held that the competing inferences from the report should not be weighed by him but rather at trial, and even though the requesting state's case was not strong, there was a prima facie case (at para. 79). Accordingly, the judge ordered committal for extradition. On appeal, the Ontario Court of Appeal upheld the committal, even though the handwriting report was necessary to the prima facie case and there were serious weaknesses in that evidence (at paras. 127, 130-133, and 141).

- [210] In this case, although there may be weaknesses in the evidence in the Record, none of the evidence that supports the inferences of knowledge has been found manifestly unreliable. Further, none of the inferences have been proven to be so unreasonable that it would be unsafe to convict based on those inferences. Viewing the evidence as a whole, and taking account of the possible individual and cumulative weaknesses in the evidence, I find that the evidence is reasonably capable of supporting the inference that the Persons Sought had sufficient knowledge of the circumstances to ground a conviction on both the trafficking and conspiracy charges.
- [211] For these reasons, I find that the facts establish a prima facie case against each of the Persons Sought for trafficking in marihuana and for conspiracy to traffic in marihuana. In accordance with s. 29(1) of the Act, there is sufficient evidence upon which a reasonable jury properly instructed could return a verdict of guilty, and the identities of the Persons Sought have been proven.

B. Summary and Order

- [212] The totality of the evidence affords some evidence upon which a reasonable jury, properly instructed, could convict each of the persons sought for conduct corresponding to the Canadian offences of conspiracy to traffic in a controlled substance and trafficking in a controlled substance. A prima facie case on each charge has been made out.
- [213] The application of the AGC on behalf of the Requesting State is granted. Shane Donald Fraser, Todd Ian Ferguson, Daniel James Joinson, Darrell Romano, Robert Romano, Ivan Djuracic, Aaron Randolph Anderson and Jamie Daniel Nenasheff are each remanded in custody to await surrender for the conduct corresponding to the Canadian offences contained in the ATP.
- [214] I must inform each of you that you will not be surrendered until after the expiry of 30 days and that you have a right to appeal the order and to apply for judicial interim release.

"The Honourable Madam Justice Watchuk"

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