

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Forward*, 2017 NSSC 109

**Date:** 2017-04-21

**Docket:** CRBW No. 454364

**Registry:** Bridgewater

**Between:**

Her Majesty the Queen

v.

Wayne Derek Daniel Forward

**Judge:** The Honourable Justice Gregory M. Warner

**Heard:** 17, 27, 28 February 2017, and 3, 4, 5 April 2017, at  
Bridgewater, Nova Scotia

**Oral** April 21, 2017

**Decision:**

**Counsel:** Rachel Furey and Derek Schnare, for the Crown  
David Hirtle, for the accused

**By the Court:**

**Part One: Background**

[1] Wayne Forward is charged on three counts that on or about February 11, 2014, at North River, Lunenburg County, Nova Scotia, he possessed three controlled substances for the purposes of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act* (“CDSA”) – cocaine, MDMA (also known as ecstasy or molly) and cannabis marihuana.

[2] On October 16, 2016, the accused filed six Charter motions – amended on December 21, 2016, to nine motions. Some were related to a statement he gave to the police and others were related to the facial and sub-facial validity of the Information to Obtain the Search Warrant (“ITO”) a search warrant, whether the Justice had sufficient grounds for the issuance of the warrant, and the validity of the Warrant itself.

[3] On February 17, 2017, the court heard the accused’s motion for full disclosure of source handler notes and source debrief reports respecting the three confidential informants whose information was part of the basis of the ITO. The officer who prepared and swore the ITO (Corporal Baker) together with the source handlers, RCMP Constable Sobieraj and Deputy Chief Feeney of the Bridgewater Police Service, were cross-examined. By oral decision given February 17, 2017, the court dismissed the accused’s motion.

[4] At the start of the hearing of pre-trial motions (including the accused’s Charter motions and the crown’s statement voluntariness voir dire) on February 27, 2017, the crown gave notice that it no longer sought to introduce at trial the statement of the accused. The accused then withdrew six of the nine Charter motions related to the statement and the crown dropped its voluntariness voir dire. The accused also gave notice that he did not seek to cross-examine the affiant of the sworn ITO (Corporal Baker).

[5] The court heard evidence and received submissions on February 27 and 28, 2017, respecting the facial and sub-facial validity of the ITO, whether Judge Lenehan had reasonable grounds to issue the search warrant and whether the warrant itself was valid. In an oral decision on February 28, the court held, following the *R v Garofoli* analysis, that Judge Lenehan could have issued the warrant on the basis of the sworn ITO of Corporal Baker and that the warrant was valid. The court also held that the failure of the warrant issued pursuant to s. 11 of the *CDSA* to specify the time for which the warrant was open for execution did not constitute a breach of the accused’s Charter rights or invalidate the warrant in the circumstances of this proceeding.

[6] The trial proceeded on April 3, 4 and 5, 2017. The crown called six police witnesses and introduced 35 exhibits. The accused called one witness. He himself did not testify.

**Part Two: Governing Principles**

[7] In making my decision, I have considered and applied the following principles.

[8] *R v Lifchus*, [1997] 3 SCR 320 (“*Lifchus*”) relates to the standard of proof. It sets out the principle that the accused enters these proceedings presumed to be innocent. That presumption of

innocence remains throughout the case until the crown has, based on the evidence, satisfied me beyond a reasonable doubt that the accused is guilty.

[9] The term “reasonable doubt” has been used for a very long time and is a part of our history and traditions of justice.

[10] A reasonable doubt is *not* an imaginary or frivolous doubt; it is *not* based upon sympathy or prejudice. It is based on reason and common sense. It is logically derived from the evidence or the absence of evidence.

[11] Even if I believe the accused is likely guilty, that is *not* sufficient. In those circumstances, I must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy me of the guilt of the accused beyond a reasonable doubt.

[12] On the other hand, it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high.

[13] To make my decision, I have considered all the evidence presented during the trial. I have chosen how much or how little I believed and relied upon each witness.

[14] In assessing the reliability and credibility of each witness’s evidence, I have considered these factors:

- a) Honesty;
- b) Interest (not status);
- c) Accuracy and completeness of observations;
- d) Circumstances of the observations;
- e) Memory;
- f) Availability of other sources of information;
- g) Inherent reasonableness of the testimony;
- h) Internal consistency, including consistency with other evidence; and,
- i) Demeanour, but with caution.

[15] Because the accused presented evidence of a police officer, even though he did not testify, I have considered *W(D)*, which sets out the following principles:

- a) If I believe the evidence presented by the accused, I must acquit;
- b) If I do not believe the evidence presented by the accused, but I am left with a reasonable doubt by his evidence, I must acquit; and,
- c) If I do not believe (but *not* left in a reasonable doubt) by the evidence presented by the accused, I must consider, based on the evidence which I do accept, whether I am convinced beyond a reasonable doubt of the accused’s guilt.

[16] In *R v Y(CL)*, [2008] 1 SCR 5 (“*Y(CL)*”), the court stated that in the assessment of reasons for a verdict, the key is whether the correct burden and standard of proof are being applied, *not* what words were used in applying them. *W(D)* offers a helpful map, not the only route. The purpose

of *W(D)* is to ensure that trier of fact understands that a verdict must not be based on a choice between the accused or other witness's evidence, but on whether, based on all the evidence, I am left with a reasonable doubt about the accused's guilt.

[17] In *R v Menard*, [1998] 2 SCR 109 ("*Menard*"), the court determined that the standard of proof beyond a reasonable doubt applies only to the final evaluation of guilt or innocence. It is not to be applied piecemeal to the individual items or categories of evidence.

[18] Thirty-five exhibits were tendered by the crown at trial. For the most part, the exhibits represented items seized pursuant to a search warrant of the accused's residence at 1171 North River Road on February 11, 2014. The accused did not admit the continuity of the exhibits seized from his residence. A portion of the time of the trial was spent in direct and cross-examination of the crown's witnesses and, in particular, the exhibit officer, Corporal Ferguson, with regards to his seizure of the exhibits and handling of them until they were tendered at trial.

[19] After the exhibits came into his possession, some, and portions of others, were forwarded by him to two other places: a laboratory in Ottawa for testing for controlled substances, and to Corporal Redden for fingerprint examination and analysis.

[20] I am satisfied from the evidence as a whole, and in particular the evidence of Corporal Ferguson and Corporal Redden, that continuity of all of the exhibits and, in particular, the substances, scales and knives sent to the Ottawa laboratory for testing and the other exhibits forwarded to Corporal Redden for finger print analysis, all of which were returned to Corporal Ferguson, has been proven beyond a reasonable doubt.

[21] The court is further satisfied beyond a reasonable doubt, based on the evidence as a whole, and, in particular, the evidence of Corporal Ferguson and Corporal Redden, that none of the exhibits were contaminated or altered while in police custody.

### **Part Three: Essential Elements**

[22] Each of the three counts of the Indictment allege possession for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*. The three controlled substances are set out earlier in this decision. For the purposes of my analysis, I have incorporated final instruction 476 from *Watts Manual of Criminal Jury Instructions*, 2<sup>nd</sup> Edition (2015) as an accurate description of the essential elements of the offences.

[23] The crown must prove each of the following four essential elements beyond a reasonable doubt in respect of each of the three substances:

- a) That the accused was in possession of the substance.
- b) That the substance was, as specified, a controlled substance as alleged in each of the three counts.
- c) That the accused knew that each of the substances was a controlled substance.
- d) That the accused had possession of the three substances for the purpose of trafficking.

[24] If the crown has not satisfied me beyond a reasonable doubt of each of these four essential elements in respect of each of the three separate substances, I must find the accused not guilty of possession of any such controlled substance for the purpose of trafficking. If I am satisfied that the crown has proven beyond a reasonable doubt the first three elements in respect of any one or more of the three controlled substances, but not the fourth element, then I may convict the accused of the included offence of possession with respect of any substance for which I am satisfied beyond a reasonable doubt he had possession and knew that the substance was a controlled substance.

[25] With respect to the first essential element – possession, s. 4(3) of the *Criminal Code* provides that a person has anything in possession when he has it in his personal possession or knowingly has it in the actual possession or custody of another person or 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. Possession includes proof that the accused was aware of, or reckless or wilfully blind to, the presence of the substance and of its character.

[26] A person may have a substance in his possession in a number of different ways. Usually possession is described as personal, or constructive, or joint.

[27] In this particular case, Mr. Forward is not alleged to have had any of the controlled substances in his personal possession at the time of the search. It appears, from the evidence of his fingerprints on the garbage bag found in the dryer, that it may be alleged that he had personal possession at a prior time.

[28] However, the allegation appears to more appropriately fit what is commonly known as constructive possession - where the substances are found in a location over which the accused has some element of control. This is described in *R. v. Morelli*, 2010 SCC 8 at paragraph 17 as follows:

Constructive possession is established where the accused did not have physical custody of the object in question, but did have it “in the actual possession or custody of another person” or “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” (*Criminal Code*, s. 4(3)(a)). Constructive possession is thus complete where the accused: (1) has knowledge of the character of the object, (2) knowingly puts or keeps the object in a particular place, whether or not that place belongs to him, and (3) intends to have the object in the particular place for his “use or benefit” or that of another person.

[29] The crown may prove the knowledge element of constructive possession by direct evidence or inference.

[30] An accused may have joint possession with others if he knows and consents to the drugs being in the possession of someone else, and exercises some control over the drugs. Control can be proven if there is a right to grant or withhold consent, but the crown must demonstrate some form of active concurrence and not mere acquiescence by the accused.

[31] This court has analyzed the evidence in the context of whether the accused had constructive possession.

[32] To find Mr. Forward guilty, I must find that he knowingly had the substance in some place for the use or benefit of himself or someone else, and that he had some measure of control over the substance. Knowingly means that he was aware of, or reckless or wilfully blind to, the

possession or custody of the substance in the place and did not act through ignorance, mistake or accident (See: *R. v. Aiello* [1979] 2 SCR 15 (“*Aiello*”). It is not necessary for the crown to prove that he had exclusive possession, but simply that he had knowledge of the existence of the substance and had some element of control over it.

[33] The second essential element is that the crown proves that the substance that Mr. Forward had possession of was a controlled substance as specified in the three counts in the Indictment. Each count is a separate offence and the four essential elements applies to each of the three counts separately.

[34] The third element is that the accused know that the substance was a controlled substance. In count one, that it is cocaine; in count two, MDMA; and, in count three, cannabis marihuana.

[35] In this case, there is no statement or acknowledgment by the accused, or any direct evidence that the accused knew the nature of the substances; therefore, the court must be satisfied beyond a reasonable doubt of the accused’s knowledge based upon the totality of the circumstances. To be satisfied beyond a reasonable doubt of the accused’s intent based on circumstantial evidence, means that the only reasonable inference from the circumstances must be that the accused had possession of controlled substances and knew that they were controlled substances.

[36] The fourth element has to do with the accused’s purpose for possession. To traffic means to sell, administer, give, transfer, transport, send or deliver something to someone or to offer to do so. To sell includes to offer or expose for sale, to have a thing in one’s possession for sale and distributing. A person may traffic in a substance in any of many different ways.

[37] The *actus reus* of possession for the purpose of trafficking is possession of the controlled substance. The *mens rea* requires proof of knowledge and intent.

[38] The element of intent has to do with the accused’s state of mind when he had the substances in his possession. The crown does not have to prove that the accused actually sold, delivered, distributed or otherwise made the drug available to other persons. The crown must prove beyond a reasonable doubt that the accused had cocaine and/or MDMA and/or cannabis marihuana for the purpose of making it available in some manner to others. There is no direct evidence from the accused in this case as to his intent. Intent may be proven by circumstantial evidence. Relevant evidence may include: a large amount of drugs (more than reasonable for personal use), scales, Ziploc baggies and other drug paraphernalia, and written transactional records.

#### **Part Four: Crown’s Evidence**

[39] Corporal David Ferguson was a member of the South Shore Integrated Drug Unit in 2014. He participated in the search of the accused’s residence at 1171 North River Road, Lunenburg County, pursuant to the search warrant issued by Judge Lenahan on the same day. He was assigned to receive and secure all exhibits seized in the search. He made detailed notes, concurrent with his participation in the search, and his subsequent handling of the exhibits from the date of the search. He was given permission to refer to those contemporaneously-prepared notes as part of ‘past recollection recorded’.

[40] He and Sergeant Trevor Mitchell were the first to approach and enter the accused’s property. They were held up briefly by a pit bull dog in the yard. When they approached the main

front door to the residence, the accused, according to Sergeant Mitchell, slowly walked to the door and opened it. Corporal Ferguson's first responsibility was to do a quick search of the residence to ensure it was clear of any people or any danger. Sergeant Mitchell explained to the accused who they were, why they were there, and showed him the search warrant and explained how the search would be conducted. He arrested the accused and read him his rights.

[41] Corporal Ferguson conducted a quick search to determine that the residence was clear of any people who could pose a risk or destroy evidence.

[42] Corporal Ferguson took a series of photographs that were marked as Exhibit #1. For much of his evidence, he related his actions and what he saw and seized to these photographs. He believed that the only people in the residence at the time he entered was the accused and a small child. Exhibit #1 contained 72 photographs of the residence and items found and seized during the search.

[43] Using the photographs, he described the house and contents in details and the location of the items seized. He described the residence as a one-and-a-half storey older home. The front door entered directly into the kitchen, to the right was a dining room/kitchen table, to the left was a refrigerator, behind which was a gun locker and a hallway, in which was situate a washer and dryer; beyond them was the entry to the living room; from the living room, stairs went up to the master bedroom and, beyond it, a child's bedroom.

[44] Once Corporal Ferguson determined the house was empty and safe, other officers commenced the search. Corporal Brown, who has been a police dog handler with the RCMP since 1994 and his police dog participated in the search.

[45] After Corporal Brown ensured it was safe for his dog to enter the residence, he began his search. His dog gave an alert at the washer and dryer. He opened the dryer door and saw a garbage bag inside. He closed the door without touching any items in the dryer and informed Corporal Ferguson.

[46] After taking Photograph #2471, Corporal Ferguson carefully removed the garbage bag, to which he had been directed by Corporal Brown, from the dryer. He was careful to preserve any finger prints that might be on the bag and its contents.

[47] In the garbage bag, Corporal Ferguson saw several items (Photograph #2485).

[48] The first item was a "vaultz" collectors box, in which he found several items including:

a) A small plastic bag (with an Apple design) with several one inch by one inch "dime bags" inside.

b) A Ziploc bag with a white powder substance, later identified as 20 grams of cocaine. Seven grams were removed from the Ziploc bag by Corporal Ferguson and sent for testing.

c) A clear Ziploc bag containing a brown sugar-like substance, later identified as containing 56 grams of MDMA. Three grams were removed and sent for testing by Corporal Ferguson.

d) A set of working digital scales with white residue. The scale was sent for testing, and the testing determined that the white residue contained cocaine.

e) A black folding pocket knife with white residue on the blade, which was sent for testing and the testing determined that the white residue contained cocaine and other substances.

f) A second brown folding pocket knife with white residue, which was also sent for testing and determined to contain cocaine and other non-controlled substances, such as benzocaine.

g) A spoon containing white residue.

[49] Also in the garbage bag was a Wendy's plastic drink cup, in which was found a second working digital scale. The scale was sent to be tested and the white residue tested as cocaine and benzocaine.

[50] Also in the garbage bag was a large Ziploc bag containing what was later identified as 147 grams of cannabis marihuana in "bud" form. Two grams were removed by Corporal Ferguson and sent for testing.

[51] Finally, in the garbage bag was another Ziploc bag, containing what was later tested and identified as 36 grams of finely-ground cannabis marihuana. Two grams were removed and sent for testing.

[52] All the items that tested positive for controlled substances were marked as exhibits, together with the related certificates of analysis and analyst reports. The garbage bag and the Ziploc bags containing the cannabis marihuana, the MDMA, the cocaine and the Wendy's drink cup were sent to Corporal Redden, a finger print expert, for analysis.

[53] On top of the gun locker, Corporal Ferguson found a box of Ziploc bags and a wallet containing the accused's ID and used Canadian bills in the following denominations, totalling \$1,580: 6 - \$50 bills, 58 - \$20 bills, and 12 - \$10 bills. They are shown in Photograph #2494.

[54] On top of the fridge (Photograph #2496), Corporal Ferguson found an electric coffee grinder that contained to smell marihuana residue. In the photograph of the fridge immediately adjacent to the front door can be seen a baseball bat.

[55] In a small wooden box on the table in the kitchen, he found rolling papers, scissors and a small cannabis marihuana bud grinder.

[56] On the same kitchen table, he found a small notebook containing on one page eleven people's names and numbers, some of which are crossed out (Photograph #2498).

[57] Finally, Corporal Ferguson was provided with a white Blackberry cell phone.

[58] As previously noted, the certificates of analysis and analyst reports confirm that in the plastic garbage bag were: Ziploc bags containing 147 grams of cannabis marihuana in bud form and 36 grams of finely ground cannabis marihuana; in the vaultz box in the garbage bag: a Ziploc bag containing 20 grams of cocaine and another Ziploc bag containing 56 grams of MDMA; two digital scales that had residue of cocaine and other non-controlled substances, such as benzocaine used to 'cut' cocaine, and two folding knives containing white residue that also tested positive for cocaine and other non-controlled substances.

[59] Based primarily on the evidence of Corporal Ferguson, I was satisfied beyond a reasonable doubt that the substances found in the plastic garbage bag in the dryer at the accused's residence were the controlled substances described in the certificates of analysis and analyst reports, and in

the quantities measured by Corporal Ferguson; that is, 20 grams of cocaine at 21% purity, 56 grams of MDMA, and 183 grams of cannabis marihuana. Furthermore, that the two digital scales and the two knives found in the garbage bag contained cocaine and other non-controlled substances used to cut or step down the purity of cocaine, such as benzocaine and caffeine.

[60] The crown proposed that Corporal David Lane be qualified to provide expert opinion evidence in the areas of: use, availability, trafficking, distribution, packaging, sale, yield, price and value of cocaine, MDMA and cannabis marihuana. The accused admitted his lengthy *curriculum vitae* (Exhibit #29) and his qualifications to give the proposed opinion evidence.

[61] The court entered into a *voir dire* to determine whether to receive opinion evidence from him. He elaborated on his work experiences. Because of his role as the drug and organized crime coordinator for Nova Scotia, he is, on a daily basis, consulted both formally and informally by police officers in Atlantic Canada. He had no knowledge of any involvement by him with Mr. Forward or this investigation until he was contacted for opinion evidence in preparation for the preliminary inquiry.

[62] Applying *White Burgess* (2015 SCC 23), the court was satisfied that both parts of the analysis were satisfied: - first, the four *Mohan* factors were satisfied, and second the probative value of admitting his evidence outweighed any prejudice.

[63] His evidence was ruled admissible, subject to whatever weight the court may give it.

[64] It was clear from his evidence that Corporal Lane was very familiar with the drug trade in Nova Scotia, not just in the Halifax Metropolitan area, but throughout the province and in Lunenburg County. He described the use of the one inch by one inch dime bags, like those found in the vaultz box in the garbage bag, as being to package both one-half gram and one-gram lots of cocaine - the usual method of distribution for street level sales. The cocaine was not pure at the street level, but “cut” or “stepped on” with non-controlled substances, such as benzocaine and caffeine, in order to increase the profit margin for the street distributor. He identified the street selling price of a half-gram as \$50 and of a full-gram as \$100. Dime bags are not used to hold cocaine for personal use.

[65] The certificate of analysis in respect of this cocaine, showing it was 21% hypo-chloral meant to him that it had been heavily “stepped on”, even though it would still sell for the prices he described. In his experience, the most cocaine someone would buy in bulk for personal use was a “8-ball” or one-eighth ounce (or 3.5 grams) package, significantly less than the amount found in the accused’s residence on February 11, 2014. In his opinion, the 20 grams of cocaine found in the garbage bag was consistent with possession by a street-level trafficker for trafficking, and inconsistent with possession for personal use.

[66] With regards to cannabis marihuana, he said most individual users purchase a couple grams at a time, at a cost of \$10 to \$15 per gram. Sometimes people will purchase up to one ounce. Purchases of more than one ounce is usually a sign of possession by a street-level trafficker. Street-level traffickers buy in one-quarter and one-half pound lots.

[67] The existence of over 180 grams of cannabis marihuana in the plastic garbage bag is consistent with possession by a street-level trafficker for trafficking, and not consistent with possession for personal use.

[68] He described MDMA as the “love drug” and is most often found in tablet form (called ‘ecstasy’), but when found as a powder, such as in this case, it is called ‘molly’. It is a popular drug among high school and college kids. They will buy one to five tabs at a time, with 100 milligrams in a tablet. If molly is taken every day, it becomes far less effective. Most people who purchase MDMA use it only on weekends.

[69] The street price of a pill is \$5 to \$10. One gram will produce 10 pills. In this case 56 grams of MDMA were found in the plastic garbage bag. He said at the street level, this would produce about 530 pills or doses of molly. He described this many pills or doses in the possession of a person as a sign of a street-level trafficker, and not consistent with possession for personal use.

[70] He repeated that the amount of marijuana, both bud and finely-ground, being about half a pound, was evidence of a street-level trafficker. He acknowledged that the marijuana in the form of bud is the way it is usually sold and once it is ground down, it is usually for personal use.

[71] He repeated that the 56 grams of MDMA was not consistent with personal use and even the cocaine, with 21% purity, was a significant amount, inconsistent with personal use, which was usually limited in volume to an “8-ball”.

[72] Added to his view that the quantity of drugs found at the accused’s residence was consistent with possession by a street trafficker were the exhibits - drug paraphernalia, found with the drugs. He noted, in particular, that the cocaine was found in the ‘vaultz’ box with the paraphernalia for trafficking, including the dime bags, digital scales and the knives with the white cocaine residue on them. There was not reason, if the cocaine was for personal use, to weigh it out and package it in dime bags. The significance of the Wendy’s drink cup with the digital scale in it derived from the fact that marijuana is crumbly; traffickers usually use a cup to hold it in to measure it on the digital scale. It is a very popular way to measure and weigh out cannabis marijuana.

[73] Corporal Lane stated that the quantity of cash in \$10, \$20 and \$50-bills was consistent with street level trafficking. Most street level sales are made for \$20 and most business is done in cash and not by credit card.

[74] He described the notebook, Exhibit #17, as being a score sheet showing debts owed by individuals. He particularly noted in Photograph #2498, next the name “Donna” a reference to “1 g”, which means 1 gram. It was suggested in cross-examination that the notebook may be a record of who the accused owed money to for drugs; Corporal Lane scoffed at the idea that someone would likely have 11 suppliers of drugs. He never heard of any such conduct. Similarly, he said it was highly unlikely that a person, for personal use, one would purchase 20 grams at a time and he had never heard of people putting cocaine in one-by-one inch dime bags themselves if it was only for personal use.

[75] He did acknowledge that if someone was a heavy user of marijuana, they could have consumed the amount of marijuana found in the garbage bag, with heavy daily use within a couple of months.

[76] The next crown witness was Corporal Kevin Redden. He is a forensic identification specialist of the RCMP at the New Minas Detachment. His *curriculum vitae* was marked as Exhibit #32.

[77] The court entered into a *voir dire* as to his qualifications to give opinion evidence respecting finger print analysis and identification. He has been an RCMP officer since 1992 and a forensic ID specialist for seven-and-a-half years. Since 2002, he has photographed and lifted finger prints and over the next seven years examined 123 objects and identified 43 sets of finger prints. Since 2008, he has attended several advanced studies and courses, and been examined with respect to finger print identification. He has provided opinion evidence respecting finger print identification and his opinion has been accepted for that purpose in Nova Scotia Provincial Court.

[78] When questioned with respect to his impartiality, he says he does not deal with the public and stated that he is often unable to make conclusions with respect to fingerprints he has examined. Applying the *Mohan* and *White-Burgess* two-step analysis, the court qualified Corporal Redden to give opinion evidence respecting finger print identification and analysis. The accused consented to his qualifications to give opinion evidence. Counsel agreed that the evidence in the *voir dire* would be evidence in the trial.

[79] Corporal Redden was provided the plastic garbage bag found in the clothes dryer, the Ziploc bags containing the cannabis marihuana, the MDMA and the cocaine, 2 digital scales, and the Wendy's drinking cup for examination for finger prints. He was also provided with sets of finger prints taken from the accused and from Jenna Karlene Piercy.

[80] Corporal Redden described and detailed the process in which he looks for finger prints on objects provided to him, how he is sometimes able to abstract finger prints that are not obvious upon an initial inspection and the various qualities that finger prints have that allow him to conduct his analysis. In carrying out his analysis, he provided the court as Exhibit #33 a booklet of 62 photographs, mostly enlargements; and, as Exhibit #35 three documents entitled 'Friction Ridge Analysis Report', to explain to the court how he conducted his examination and analysis. He was unable to find any friction ridge impressions with sufficient detail to be suitable for elimination or identification on any of the exhibits provided to him, except the garbage bag containing the drugs and paraphernalia in the dryer.

[81] The only exhibit from which he developed suitable friction ridge impressions was the plastic garbage bag. Corporal Redden located 10 friction ridge impressions (finger prints), which appeared to contain sufficient detail as to be suitable for elimination or identification. Eight impressions were located on one-side of the bag and two impressions on the opposite side of the bag. Each of the impressions was analysed using the process and detail described in Exhibit #35.

[82] When Corporal Redden compared the ten impressions containing sufficient friction ridge impressions to be suitable for analysis, he found none of them matched any of the finger prints provided by Jenna Karlene Piercy. Eight of the ten impressions on the garbage bag, in Corporal Redden's opinion, matched finger prints of the accused. Two matched the accused's left ring finger, two the right ring finger, one the left index finger, one the left thumb finger, one the left little finger and one the right index finger.

[83] As part of Exhibit #35, Corporal Redden took the finger print (R6) of the right finger from the garbage bag and compared it to the known right ring-finger print of the accused and demonstrated to the court his methodology, and the basis for his conclusion that 8 of the 10 recoverable fingerprint impressions on the garbage bag belonged to the accused.

[84] Corporal Redden was cross-examined, mostly relating to concerns about the continuity of exhibits he handled, any action by him that might affect the validity of his methodology and opinion, and the fact that the officer was unable to find any viable fingerprint impressions other than the 10 impressions on the garbage bag.

[85] Based on his evidence, the court is satisfied beyond a reasonable doubt that of the ten identifiable finger prints on the garbage bag taken from the clothes dryer in his residence, eight of the finger prints matched the accused. None of them matched Ms. Piercy's fingerprint impressions. The 2 recovered fingerprint impressions that did not match the accused were from a different unknown source.

[86] As indicated above, Corporal Glen Brown, the dog handler, entered the accused's residence after Corporal Ferguson had made sure it was safe, and when dog gave an alert by the washer and dryer, he opened the dryer door, saw the garbage bag, smelled what he thought was marihuana, closed the door without touching anything in the dryer, and continued his search and advised Corporal Ferguson.

[87] Corporal Nicholas Baker, the affiant for the ITO, assisted in the search of 1171 North River Road (the accused's residence) on February 11, 2014. He entered after Sergeant Mitchell and Corporal Ferguson. Sergeant Mitchell was with the accused at the kitchen table. At one point, he asked Mr. Forward to empty his pocket and Mr. Forward took out the cell phone, which he noticed was rebooting itself at the time. This is the Blackberry phone that was marked as an exhibit and shown in the photographs of Corporal Ferguson. He identified the cell phone as a white Blackberry and he was certain from the look of the screen that it was rebooting itself. He gave the phone to Corporal Ferguson when he left. When he examined the phone, he found no SIM card in it.

[88] Sergeant Mitchell testified to his involvement in the search of the accused's residence of February 11, 2014. He and Corporal Ferguson arrived at the accused's residence at 2:15 in the afternoon. They were met by a pit bull in the yard, arrived at the front door; the accused was slowly coming towards the door. He explained to the accused who he was and why they were there. He placed him under arrest, read him the police warning and his Charter rights. While other members of the search team arrived, he sat with the accused at the kitchen table. It was cramped, so they moved to the living room. There he explained what the warrant was and that the police had no intention of tearing his place apart.

[89] When he was in the living room, he observed the accused with his hand to his ear talking into a phone. He was present when the accused emptied his pockets and the cell phone was given to Baker.

[90] He did not handle the fire arms found in the gun locker, but he was involved when the accused's father produced registrations for the firearms so he decided to arrange for them to be returned to the accused's father. He was the one who took the finger print impressions of the accused, which were given to Corporal Redden for his examination and analysis.

#### **Part Five: Defence Evidence**

[91] Constable Scott Morrison was called by the accused. He participated in the search of the accused's residence. His first role was scene security and thereafter to assist in the search.

[92] He saw the accused's father, Wayne Forward Sr., outside, behind the accused's residence. He placed him under arrest and found on him a small bag of a green, leafy substance, which to him, appeared to be cannabis marihuana.

[93] On cross-examination, he acknowledged that he was not aware whether the contents of the bag had been tested to confirm that it contained marihuana.

[94] When he entered the accused's residence, he remained in the kitchen area. He saw a black gun case, in which he found a shot gun, next to the wood stove in the kitchen. It is shown in Photograph #2487. It had no ammunition in the chamber.

[95] He saw the notebook, with what he called the score sheet (Photograph #2498) lying on the kitchen table in a location he pointed out in Photograph #2466.

### **Part Six: Defence Submissions**

[96] In closing submissions, counsel for the accused made these points:

1. The accused's prints were not the only prints on the garbage bag found in the dryer.
2. The methodology of the finger-print expert relied upon his opinion being verified by another expert. The reference in Corporal Redden's report at Page 10 to the effect that a Corporal MacLean verified his report was, counsel submitted, hearsay and not admissible without Corporal MacLean being called as a witness. Effectively, Corporal Redden's analysis was incomplete and not reliable.
3. Corporal Lane opined that it was not out of the realm of possibility that the quantity of marihuana found in the garbage bag could be consumed by a heavy user in a two-month period. This was a period of time within the marihuana would have retained its potency.
4. The box on the kitchen table with the scissors and other items was consistent with personal use of marihuana.
5. Corporal Lane acknowledged that the more MDMA one consumed, the more it takes to have an effect. This may justify a substantial quantity of MDMA other than for the purpose of trafficking.
6. The scales could be used to measure the drugs for personal use.
7. The knives with the cocaine residue could be used to make lines of cocaine for consumption, not just to cut the cocaine from the block found in the Ziploc bag in the garbage bag.
8. There were other possible persons who had access to and possible possession of the controlled substances. They included the accused's common-law wife and his father. Just because the accused lived in the house did not mean that he had knowledge and control of the drugs. The crown had to prove his knowledge and control beyond a reasonable doubt.
9. There was no handwriting analysis or any other evidence as to who wrote on the score sheet, and it was possible that it was a record of purchases from several other persons, not sales to others.

**Part Six: Conclusion**

[97] As noted above, the crown must prove beyond a reasonable doubt four essential elements with respect to each of the three counts of possession of a controlled substance for the purpose of trafficking.

[98] One of these elements is to prove that the substances found in the garbage bag in the dryer in the accused's house were the specified controlled substances. I have previously stated that, based on the evidence as a whole, I am satisfied beyond a reasonable doubt of the continuity of the substances and the paraphernalia from their seizure in the dryer in the accused's residence to the time they were tested, examined and tendered in court.

[99] Based on the certificates of analysis, I am satisfied that the crown has proven beyond a reasonable doubt that the substances found in the garbage bag consisted of 20 grams of cocaine, a Schedule 1 controlled substance; 56 grams of MDMA, a Schedule 1 controlled substance; and, 183 grams of cannabis marihuana, a Schedule 2 controlled substance.

[100] The second essential element is proof beyond a reasonable doubt that the accused was in possession of the three controlled substances.

[101] At the time of the search on February 11, 2014, the substances were not in the accused's personal possession. He and his young child were the only persons in the residence at 1171 North River Road, Lunenburg County, when the drugs were found in the garbage bag in his dryer. The accused's father was found in the back yard, outside the residence, at the time of the search.

[102] There is no requirement that the crown prove that the accused had exclusive possession of the drugs or of the residence, but rather that he had knowledge of, and some control over the substances.

[103] I am satisfied, beyond a reasonable doubt, that the accused possessed the drugs in the garbage bag in his dryer for several reasons, whether or not he lived there with his young child and possibly an unnamed female partner (whose clothes can be seen in one of the photographs of the master bedroom).

[104] Eight of the ten viable finger-print impressions on the garbage bag containing the controlled substances and the paraphernalia found hidden in the laundry in the dryer in his house were his. His residence is small and the dryer is in a very visible location in the residence. It is not reasonable to conclude that he did not control the residence and the dryer or the contents of the dryer, or that he could possibly have had no knowledge as to what was in the garbage bag.

[105] In addition, if Jenna Piercy, whose finger prints were provided to Corporal Redden, was the person who resided in the residence with the accused, Corporal Redden stated that none of the viable finger-print impressions on the garbage bag found in the dryer matched her prints.

[106] I am satisfied beyond a reasonable doubt that Wayne Forward, the accused, had constructive possession of the cocaine, the MDMA and the cannabis marihuana in the garbage bag by reason of it being found in the dryer in a highly visible location in his residence and that it was his finger prints on the garbage bag.

[107] The third essential element is that the crown prove beyond a reasonable doubt that the accused had knowledge of the presence of controlled substances. In *Aiello*, the Supreme Court concluded that recklessness or wilful blindness were also included in the *mens rea* of the offence.

[108] There is no direct evidence that the accused actually knew that the garbage bag contained cocaine, MDMA, cannabis marihuana or any controlled substances.

[109] The indirect or circumstantial evidence is that the three controlled substances were found hidden in a garbage bag, with drug paraphernalia, which itself contained drug residue, in a clothes dryer filled with laundry. It makes no sense that if the accused was not aware of the nature of the three substances, that those substances would be placed in a plastic bag in a clothes dryer among laundry, as can be clearly seen in Photograph #2479, with two digital scales containing drug residue, two knives containing drug residue, and dime bags.

[110] I am satisfied beyond a reasonable doubt that the accused knew that the substances were the controlled substances of cocaine, MDMA and cannabis marihuana.

[111] There is no evidence before the court that, with respect to any of the three substances, the accused had a license to lawfully hold any of the three controlled substances legally. The fact that they were hidden in the manner in which they were hidden leads to no other conclusion than that the accused knew the substances were illegal controlled substances.

[112] The fourth element requires the crown to prove beyond a reasonable doubt that the possession of each of the three controlled substances was with the intent to traffic.

[113] There is no direct evidence of the sale or distribution of any of the three substances. The crown effectively relies upon circumstantial evidence. The principal evidence upon which they rely is the totality of the items found and seized from the residence, upon which Corporal Lane gave opinion evidence.

[114] As previously noted, circumstantial evidence of an intent to traffic may include a large quantity of the individual drugs, more than is reasonable for personal use; paraphernalia related to trafficking, such as digital scales, baggies, Ziploc bags, knives, large quantities of small denomination of cash, score sheets, and in addition consideration of the manner in which the substances are stored.

[115] It is possible, taken in isolation and without reference to the other drugs and drug paraphernalia, that the quantity of cannabis marihuana, even though exceptionally large for personal use, could have been held for personal use. Evidence supporting personal use of the cannabis marihuana included the box on the kitchen table with items consistent with personal use of cannabis marihuana and the fact that some of the marihuana was found finely ground and not in bud form.

[116] The court's job is to take the evidence in totality and not in isolation. It is possible that the accused may have made personal use of some of the cannabis marihuana; however, based on the large quantity of the three substances found and the paraphernalia relevant to the sale of all three substances (including in the instance of cannabis marihuana, the Wendy's cup with the digital scale inside), together with the opinion of Corporal Lane, I am satisfied beyond a reasonable doubt that, even if the accused used some of the stash of cannabis marihuana, the majority of it, and the cocaine and the MDMA were each held for the purpose of trafficking.

[117] The digital scales and the dime bags have no purpose other than in relation to trafficking the three substances. The Ziploc bags on the gun locker are relevant to the sale of cannabis marihuana.

[118] The large quantity of cash in low denominations, the baseball bat by the front door in February, and the score sheet are additional circumstances that eliminate possession for personal use only.

[119] In summary, I find Wayne Forward possessed all three controlled substances for the purpose of trafficking, and therefore find him guilty of all three counts in the Indictment.

Warner, J.