

Case Name:

R. v. Nguyen

**Between
Regina, and
Donald Nguyen**

[2004] B.C.J. No. 2667

2004 BCPC 465

Chilliwack Registry No. 46913

British Columbia Provincial Court
Chilliwack, British Columbia

Young Prov. Ct. J.

Heard: December 1 and 2, 2004.

Judgment: December 13, 2004.

(43 paras.)

Civil rights -- Security of the person -- Lawful or reasonable search -- Searches incidental to arrest or detention -- What constitutes unreasonable search and seizure -- Right to counsel -- Advice of, understanding of -- Canadian Charter of Rights and Freedoms -- Denial of rights -- Remedies, exclusion of evidence.

Application by the accused Nguyen to exclude evidence against him. The evidence consisted of keys found in his pants' pocket and a statement that he gave to the police. Nguyen was charged with unlawful production of marihuana, possession for purposes of trafficking and theft of electricity. The police were in the area of a house where they thought that hydro was being stolen. They had been provided with documents from BC Hydro which supported this claim. They saw Nguyen leave the house and enter a car that was parked in the driveway. He was stopped and arrested by police for hydro theft. An officer informed him of his right to counsel and his right to remain silent from memory. The police then searched him and found a set of house keys on him. Nguyen identified which key was for the front door. He was not the owner of the home. The police obtained a search warrant and discovered the growing operation and the hydro bypass. External surveillance did not reveal the existence of the operation.

HELD: Application allowed. The police lacked reasonable grounds to arrest Nguyen for hydro theft. They lacked subjective and objective grounds to conclude that there was a growing operation in the home and that hydro was being stolen. Nguyen's rights to be secure against an unreasonable search and seizure were violated. The arrest was unlawful and the keys were obtained as the result of a search incidental to an unlawful arrest. The search was more than a protective pat-down search of a detained person. It was not carried out in a reasonable manner. The keys would not have

been otherwise discovered. Nguyen's right to counsel was also violated. There was a conflict in the evidence of the two attending police officers as to Nguyen's comprehension of the English language. The court was not satisfied that Nguyen had complete understanding of the right to retain and instruct counsel before he spoke to the officers. The keys were excluded because they resulted from an unreasonable search. The statement was excluded because it was conscriptive evidence. Its admission would compromise trial fairness.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, ss. 8, 10(b), 24(2).

Controlled Drugs and Substances Act, ss. 5(2), 7(1).

Criminal Code, ss. 326(1)(a), 495(1)(a).

Counsel:

Counsel for the Crown: M. Suderman

Counsel for the Defendant: J. Solomon

1 YOUNG PROV. CT. J.:-- This is a ruling on a voir dire. The accused, Donald Nguyen, is charged with the following three counts:

Count 1

On or about the 12th day of June, 2003, at or near the City of Chilliwack, in the Province of British Columbia, did unlawfully produce a controlled substance, to wit: Cannabis (marihuana), contrary to Section 7(1) of the Controlled Drugs and Substances Act.

Count 2

On or about the 12th day of June, 2003, at or near the City of Chilliwack, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Cannabis (marihuana), in an amount exceeding 3 kilograms, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 3

Between the 12th day of March, 2003 and the 13th day of June, 2003, at or near Chilliwack, in the Province of British Columbia, did fraudulently abstract, consume, use or cause to be diverted electricity, the property of British Columbia Hydro and Power Authority, of a value not exceeding five thousand (\$5,000.00) dollars and did thereby commit theft, contrary to section 326(1)(a) of

the Criminal Code.

2 Defence submits that there has been a breach of the accused's section 8, as well as section 10(b) Charter rights. Mr. Nguyen (hereinafter referred to as the driver) was stopped by the police as he drove away from a house in which a small marihuana grow operation was later found. The police located a set of house keys on the driver's person. Defence submits that the arresting police officer, Cst. Curry, did not have reasonable grounds to arrest the driver for theft of hydro electricity, based on the information that he, and his brother officer, Cst. Vallance, had prior to the arrest. Detention perhaps, arrest no. The defence accordingly submits that this is not a case of simple investigative detention, but rather that the arresting officer found the keys as a result of the incidental power to search on arrest, and that the arrest was unlawful. Defence submits the evidence of the keys and a statement made by the driver should be excluded pursuant to section 24(2) of the Charter. Defence counsel further submits that the Crown has not proven identification beyond a reasonable doubt.

3 Defence counsel does not take issue with the evidence regarding the finding of a marihuana grow operation in the house on Wells Road in Chilliwack, from which the driver was seen leaving. Defence does not take any issue with respect to the theft of the hydro electricity at the house in question, or with respect to the value of that theft. Defence does not take issue with the validity of the search warrant. B.C. Hydro had advised the police of a theft of hydro electricity from the residence on June 4th, 2003, several days before the arrest of the driver.

REVIEW OF THE EVIDENCE

4 Cst. Curry met Cst. Vallance in the area of the house on Wells Road on June 12th. He was briefed by Cst. Vallance that he thought there was a theft of hydro going on in the house. Cst. Vallance also described a red Honda Accord parked in the driveway associated with the house. Cst. Vallance advised Cst. Curry that anyone seen leaving the house was arrestable for the theft of hydro. Cst. Vallance gave him the names of the house owners. Those owners' names did not include the name of the Asian male who was later observed driving away from the house in a red Honda. Cst. Vallance did not provide further information to Cst. Curry.

5 After this briefing, Cst. Curry did surveillance on the house. At 7:20 am he saw an Asian male leave the house, and enter the red Honda Accord parked in the carport. He was the only occupant. The man backed out and headed down the street. Cst. Curry pursued the vehicle. He pulled the vehicle over. The Asian male driver spoke English. He understood what Cst. Curry was saying. Cst. Curry identified the driver as the accused, and testified that he had distinctive red hair. After a few questions he arrested the driver for theft of hydro electricity. Cst. Curry then advised the driver he had the right to obtain and instruct counsel in private without delay. Cst. Curry further advised the driver that he could contact any lawyer he wished, and that if he did not have a lawyer, and wished to contact a legal aid duty lawyer, he could do so back at the detachment. Cst. Curry asked the driver if he understood, and the driver replied that he did. Cst. Curry recited from memory the section 10(b) Charter rights to the driver. However, Cst. Curry was quite candid in cross examination in saying that he did not remember the exact words that he used when speaking with the driver about his section 10(b) Charter rights

6 The driver stated he understood what Cst. Curry had said to him. The driver did not want to call a lawyer. Cst. Curry then advised the driver that he was not obliged to say anything, but that anything he said may be used in evidence. The driver appeared to understand that warning. After that, Cst. Vallance spoke with the driver. Cst. Curry searched the driver. Cst. Curry located a set of keys in the driver's pant pocket, and turned those keys over to Cst. Vallance. One of the two officers then asked the driver if he had keys to the house, at which point the driver showed them which key was for the house. Cst. Vallance asked the driver if he had just come from the Wells Street address. The driver replied yes. Cst. Curry asked the driver if anyone else was in the residence, to which the driver replied there was a female. Cst. Curry also remembered asking if there were any booby traps or weapons present in the house. Cst. Vallance subsequently took two keys off the key ring. One of the keys opened the front door of the house, as well as the door to the basement of the house where the grow operation was located.

7 In cross-examination, Cst. Curry testified that the driver did not appear to understand Cst. Vallance, and that he, Cst. Curry, thought that the driver was playing games. However, Cst. Vallance testified that he did not have any problems understanding the driver, or visa versa. The officers' evidence is contradictory on whether or not the driver did in fact understand what was being said.

8 What is troubling about Cst. Curry's evidence is that he clearly cannot recall what exactly he told the driver about his section 10(b) Charter rights. In cross examination, Cst. Curry testified he was not sure of the words he used to convey the section 10(b) Charter rights to the driver. He did not make a point of reading the section 10(b) Charter rights from a card, after he had secured the driver. He simply turned the driver over to Cst. Vallance, who also did not read the section 10(b) Charter rights to the driver. Cst. Curry advised Cst. Vallance that the driver did not want to speak with a lawyer, but he made no note of that remark to Cst. Vallance. Cst. Curry observed that the driver initially seemed to speak English fluently, but that after his arrest, the driver was no longer able to speak English. At that point, Cst. Curry recalled the driver saying he did not understand. In cross-examination, Cst. Curry agreed he did not see the driver use any keys in order to secure the house. Cst. Curry arrested the driver because he had been advised by Cst. Vallance to arrest anyone leaving the house for theft of hydro electricity.

9 Cst. Vallance had been faxed a number of documents from B.C. Hydro, indicating theft of hydro from the residence in question. That was in early June 2003. Cst. Vallance attended the Wells Road address on June 10th, 2003. He then attended City Hall in order to obtain the name of the home owner. The owner was not Mr. Nguyen. The owner, a Mr. Tran, had been the owner since February 2003. On June 10th, Cst. Vallance conducted surveillance on the house. He did not see any vehicles parked in the car port, and no lights were on in the residence. He spoke with a neighbour who lived in the area, who advised Cst. Vallance of several observations concerning the house. Those observations were that an oriental couple lived at the residence, which had been sold in late January, 2003. Furthermore, since the house had been purchased, both a grey truck and a red Honda had been seen at the house. The neighbour indicated that the red Honda had been seen more often. Also, a rusty old Ford pickup truck had been seen at the house more recently. The evidence is unclear as to how often, and when, the red Honda had been seen at the house. There is some suggestion in the evidence that the neighbour had seen the red Honda more recently, along with the Ford truck. However, there is a lack of clarity in Cst. Vallance's evidence as to exactly what the neighbour observed regarding the timing of the red Honda's presence at the house.

10 Cst. Vallance then followed up on the ownership of the vehicles. The two pickup trucks had been registered to a Mr. Tran, and the red Honda was registered to a Donald Nguyen. Mr. Nguyen was clearly not the home owner.

11 On June 10th, 2003, at 8:45 p.m. Cst. Vallance saw the red Honda outside the house in the carport. Beside the red Honda was the Ford pickup truck.

12 Then on June 11th, 2003, at 0640 hours, Cst. Vallance drove by the house, and saw the red Honda parked outside in the carport beside the Ford truck. Cst. Vallance did not observe any activity around the house. At 5:20 p.m., on June 11th, he did further surveillance on the house, and saw only the Ford truck parked in the carport. There was no activity at the house. He stayed for two hours, but the red Honda did not reappear. Cst. Vallance then spoke with the neighbour who indicated that the red Honda was now back at the house, and that the pickup truck was also there. As well, the neighbour advised that an Asian male with red hair was watering the garden.

13 Then on June 12th Cst. Vallance set up surveillance at 0601 hours. He saw that the same red Honda was parked in the carport. Again, there was no activity around the house. At 0613 hours, Cst. Vallance spoke with Cst Curry and advised him of the vehicles present at the house, and that in the prior couple of days the red Honda had been moving too and from the residence, and was a vehicle of interest. Cst. Vallance advised Cst. Curry that if the owner of the red Honda left the house, he was to be arrested for theft of hydro.

14 At 7:20 a.m., Cst. Vallance saw an oriental male leave the side door of the house, and get into the red Honda. He saw the male lock up the side door. The male got into the driver's side of the vehicle. The Honda left. It was

subsequently pulled over by both officers. Cst. Curry advised Cst. Vallance that he had arrested the driver, who produced a picture driver's license in the name of Donald Nguyen. The driver's license referred to a Vancouver address. Cst. Vallance identified himself as a police officer to the driver. Cst. Vallance confirmed with Cst. Curry that he had in fact given the section 10(b) Charter rights to the driver. Cst. Vallance did not charter or warn the driver. Cst. Vallance did not notice any sign that the driver did not understand what was being said to him. Rather, the driver was responsive to questions. Cst. Vallance asked the driver if he had come from the residence on Wells Road. The driver replied yes, that he had overnighted, cut the grass last night at the house, and that he was on his way to Vancouver for a 10 o'clock appointment with ICBC.

15 Cst. Curry gave Cst. Vallance a set of keys he had seized from the driver's pants pocket. Cst. Vallance asked the driver if these were the keys to that house, and the driver replied yes. The driver volunteered which key was to the house itself, which key was to the shed attached to the back of the carport, and which was the mail key. Cst. Vallance then seized two keys from the set of keys. Cst. Vallance also asked the driver what might be in the trunk of the Honda, and the driver replied "grass". Cst. Vallance opened the trunk, and observed three bags of lawn grass inside the trunk. The driver was then transported by a third officer to the detachment.

16 Cst. Vallance prepared an information to obtain a search warrant. The first warrant request was denied. Cst. Vallance then prepared a second information to obtain, and was successful in obtaining a search warrant.

17 At 1425 hours, on June 12th, 2003, Cst. Vallance executed the search warrant at the house. He used the key which he had obtained from the driver. The key opened the front door, and also the locked door at the top of the stairs leading to the basement. Cst. Vallance did not locate anyone in the house. Cst. Vallance described how he could smell an overpowering odour of marihuana coming from within the residence. The grow operation was located in the basement. Cst. Vallance explained why it is usual that grow operations result in theft of electricity.

18 The police located the hydro bypass in a bedroom at the far end of the hallway. The bypass had been covered over, at least with some form of plastic.

19 Cst. Vallance then returned to the detachment. Once he had received a call that the grow operation had been dismantled, and the bypass removed, he dealt with the driver. He fingerprinted and photographed the driver at the detachment, and then released him on a promise to appear.

20 In cross-examination, Cst. Vallance testified that the information he received from B.C. Hydro was that there was theft of 3632 watts of electricity. He acknowledged that a theft in that amount was the equivalent of about three, 1000 watt lights being used in the house. At most, such theft would be indicative of a small grow operation. Cst. Vallance agreed that he did not smell marijuana, nor see any condensation on windows, during his surveillance of the house. He did not hear any sounds indicative of a grow operation. The hydro subscriber was a Mr. Tran, not the accused. Cst. Vallance ran Mr. Tran on CPIC, and learned that he had warrants outstanding from Ontario, for production of marihuana, and hydro theft. Cst. Vallance knew the owner of the red Honda had a Vancouver address, and was not the house owner. Furthermore, Cst. Vallance had never seen anyone driving the red Honda during the course of his surveillance. He had simply seen it parked in the carport. Cst. Vallance took the position that anyone getting into the red Honda from the house was to be arrested for theft of hydro electricity.

21 Cst. Vallance did not hear Cst. Curry read the section 10(b) Charter rights to the driver. Furthermore, Cst. Vallance did not know what answers the driver gave as to whether or not he wanted to speak with a lawyer. Cst. Vallance understood that Cst. Curry had properly chartered and warned the driver. Cst. Vallance acknowledged that he did not know if the driver wanted to exercise his right to counsel before speaking with the two officers. He also acknowledged there was no urgency to his asking the driver questions about the keys.

22 Cst. Vallance acknowledged that he had viewed a photograph of the driver in the police file. He was also present when the driver was photographed. Cst. Vallance fingerprinted the driver.

23 Cst. McLachlan assisted with the search of the house on Wells Road. She was the exhibits officer at the scene. She observed the hydro bypass. She was not able to say for certain if the bypass was covered over or not. She testified that it might have been possible that a piece of drywall was placed in front of the bypass. The bypass was also covered with some type of plastic.

SUBMISSIONS

24 Defence counsel submits that Cst. Curry and Cst. Vallance did not have reasonable and probable grounds to arrest the driver of the red Honda, pursuant to section 495(1)(a) of the Criminal Code. Firstly, the officers did not know who the driver in fact was. There was no suggestion that the driver had been seen in and around the house in question, other than cutting the lawn on the prior day. Even if the driver had some recent association with the house, such association does not amount to the driver's involvement with theft of hydro electricity. Also, how often and when the Honda had been seen in the carport is rather unclear in the evidence, apart from the observations of Cst. Vallance. Cst. Vallance had received information from B.C. Hydro that there had been a theft of over 3 thousand watts, or the equivalent only of three 1000 watt light bulbs. In other words, this was not a substantial hydro theft. Furthermore, Cst. Vallance was aware that other persons were more directly associated with the house, not just the driver of the red Honda. Counsel submits that while Cst. Curry may have had a subjective basis for his reasonable and probable grounds, he did not have an objective basis for his grounds to arrest the driver.

25 Secondly, defence counsel submits that Cst. Curry did not have the right to search the driver incidental to what was in effect an unlawful arrest. Given all the circumstances known to the arresting officers, counsel submits there has been a section 8 Charter breach.

26 Defence counsel also submits there has been a section 10(b) Charter breach, given that the evidence is unclear as to whether or not the driver was correctly advised of the full extent of his section 10(b) Charter rights. Counsel submits that Cst. Curry is an unreliable witness, and that his evidence is inconsistent on certain points with the evidence of Cst. Vallance. Cst. Curry frankly stated in cross examination that he could not recall exactly what he said to the driver about his section 10(b) Charter rights.

27 Defence counsel has drawn my attention to the following decisions: *R. v. Mann*, [2004] S.C.J. No. 49, *R. v. Kudryk*, [2004] B.C.J. No. 2140, 2004 BCSC 1278, and *R. v. Van*, [2004] B.C.J. No. 1946.

para28] Lastly, defence counsel submits that identify of the driver is in issue. Counsel submits that Cst. Vallance's identification has been tainted by his viewing the photograph in the police file, prior to giving his evidence. Cst. Curry only had brief involvement with the driver. However, I note that defence counsel did not strenuously argue the issue of identification in this matter.

29 The Crown submits that Cst. Curry was entitled to rely upon the direction of Cst. Vallance in arresting the driver. Crown counsel has drawn my attention to *Debot v. The Queen* 52 C.C.C. (3d) 193. Cst. Curry was entitled to assume that Cst. Vallance had reasonable and probable grounds for ordering the arrest.

30 Crown counsel submits that Cst. Vallance had reasonable and probable grounds to order Cst. Curry to arrest the driver. He submits that Cst. Vallance was entitled to rely on the information obtained from the neighbourhood informant, plus his own observations of the red Honda being in the carport on two successive days. The Crown does acknowledge that the evidence is unclear as to how frequently prior to June 10th the red Honda had been seen at the residence. However, the Crown points to the information from a neighbour that an Asian male with red hair was cutting the lawn on June 11th. The person arrested by Cst. Curry was in fact an Asian male with red hair. Furthermore, the driver was observed leaving the residence on June 12th. It appeared to Cst. Vallance that the person had locked the door to the residence.

31 Crown counsel relies on *R. v. Arason*, [1992] B.C.J. No. 2558, Carswell BC 814. I have had the opportunity of reviewing that decision, but in my view, that decision can be distinguished. The Crown submits that it is reasonable to

assume that the driver of the red Honda was in control of the residence, by reason of the use of a key, and that this same person was associated with a vehicle, which had been seen at the house on prior occasions. In addition, the person seen leaving the house was also observed cutting the lawn the day before. Crown submits that the police accordingly had reasonable and probable grounds to arrest the driver for theft of hydro electricity, and to search the driver incidental to a lawful arrest. A person in control of the dwelling house would also have control of the hydro electricity coming into that house. The Crown submits the defence has not proven a section 8 Charter breach.

32 The Crown submits that Cst. Curry advised the driver of the information component required by section 10(b) of the Charter. He was clear that the driver did not want to speak with a lawyer, before conversing with the officers about the keys found on his person. The Crown submits the defence has not established a breach of the driver's section 10(b) Charter rights.

ANALYSIS

Identification

33 I am satisfied that the Crown has proven identification beyond a reasonable doubt. This issue was not strenuously argued by defence counsel. While Cst. Vallance had looked at a photograph prior to giving his evidence, he had involvement with the driver both at the road side, and back at the detachment later the same day. The driver had rather distinctive red hair. I do not find that either Cst. Vallance or Cst. Curry was shaken with respect to their identification of the accused as being the person they stopped in the red Honda. Accordingly, I find the accused was the driver.

Breach of the accused's section 8 Charter rights

34 Cst. Vallance suspected the presence of a marihuana grow operation at the Wells Road house, based on the information he had received from B.C. Hydro regarding the possible theft of a small amount of hydro electricity. However, Cst. Vallance's surveillance of the house did not establish the presence of a marihuana grow operation. Cst. Vallance did not detect an odour of marihuana coming from the residence. He did not observe any condensation on windows, or overhear sounds associated with a marihuana grow operation. Cst. Vallance relied on information received from an informant, but he did not conduct an extensive surveillance of the house. Also, there was no suggestion that the informant had made observations of a marihuana grow operation at the house.

35 Cst. Vallance observed the red Honda in the carport on only two occasions. Furthermore, the evidence is unclear as to how often the informant had seen the Honda at the house. Cst. Vallance had no idea who was operating the red Honda. Was it the registered owner, or someone else? There was no evidence placing the accused directly at the residence, other than the informant's observation that an Asian male with red hair had been cutting the grass the day before. The most compelling evidence is that the accused left the house early in the morning. Cst. Vallance observed the accused to lock the house prior to his getting into the red Honda. Accordingly, did Cst. Vallance and Cst. Curry believe on reasonable and probable grounds that the accused had committed an indictable offence, being theft of hydro electricity? As stated in *Storrey v. The Queen* (1990), 53 C.C.C. (3d) 316 (S.C.C.), the arresting officer need not establish a prima face case for conviction before arresting a person, but an arresting officer's grounds must be objectively justifiable.

36 I do not find that the arresting officers had reasonable grounds to arrest the accused for theft of hydro electricity, pursuant to section 495(1)(a) of the Criminal Code. I am not satisfied that the officers, in particular, Cst. Vallance, had subjectively and objectively, grounds to conclude that there was a marihuana grow operation in the house, and thus theft of hydro electricity. Cst. Vallance had only a suspicion that the small amount of hydro theft was consistent with a grow operation. He did not make any other observations to confirm the existence of a grow operation. His surveillance was of brief duration. For example, he did not smell an odour of marihuana coming from the residence, nor observe any other signs of a grow operation.

37 Accordingly, I find the accused has established a breach of his section 8 Charter rights. His arrest was unlawful,

and the evidence, being the keys, was obtained as a result of a search incidental to an unlawful arrest. The search was more than a protective pat-down search of a detained person. The Crown has not shown on a balance of probabilities that the search was carried out in a reasonable manner. The keys would not otherwise have been discovered.

Breach of the accused's section 10(b) Charter rights

38 I do not find the evidence is clear with respect to the information component of section 10(b) of the Charter. Cst. Curry seemed to believe he had satisfied the information component, but then admitted in cross-examination that he could not recall exactly what he told the accused at the time of his arrest with respect to his section 10(b) Charter rights. Cst. Curry also stated that the accused perhaps pretended not to understand what was being said to him. On the other hand, Cst. Vallance testified that the accused did understand what was being said to him, and was responsive in the English language. There is clearly conflict in the evidence of the two officers as to the accused's understanding of English. I am not satisfied the accused had a complete understanding of his right to retain and instruct counsel before conversing with the officers. For both reasons, I am satisfied the accused has proven a breach of his section 10(b) Charter rights.

Section 24(2) of the Charter

39 In *Mann*, supra, Deschamp J. (dissenting) made the following remarks regarding the section 24(2) analysis:

As this Court recently affirmed in *R. v. Buhay*, [2003] 1 S.C.R. 631, 2003 SCC 30, at para. 41, and *R. v. Law*, [2002] 1 S.C.R. 227, 2002 SCC 10, at para. 33, the following three factors are taken into consideration in determining whether or not evidence should be excluded under s. 24(2) of the Charter: (1) the effect of admitting the evidence on the fairness of the subsequent trial, (2) the seriousness of the police conduct, and (3) the effects of excluding the evidence on the administration of justice.

40 Firstly, the evidence of the keys is not conscriptive. As such, their admission would not compromise the fairness of the trial. However, I am satisfied that the second and third considerations justify excluding the evidence of the keys. The violation was not motivated by a situation of urgency or necessity. The arresting officers could not have found the keys in an inner pants pocket if it had not been for the accused's cooperation. Persons do have a reasonable expectation of privacy in their pockets. See *R. v. Mann* supra, para 56. Accordingly, the accused had an expectation of privacy regarding the keys. The search was incidental to an unlawful arrest. While the police were entitled to detain the accused for investigative purposes, and to conduct a pat-down search to ensure their safety, the search of the accused's pants pocket was unjustified. The search of the accused's pocket went beyond what was required to mitigate concerns about officer safety. Accordingly, the evidence of the keys is excluded.

41 Secondly, the accused's statement is conscriptive. As such, the admission of the statement would compromise trial fairness. The evidence is simply unclear as to whether or not the accused was given the entire information component of his section 10(b) Charter rights. It would have been easy enough for one or both arresting officers to have read the section 10(b) Charter rights from a card. That was not done. Furthermore, Cst. Curry thought the accused might be pretending he did not understand English. However, Cst. Curry did not do the necessary to determine if in fact that was the case. There was no attempt to have an interpreter assist, to ensure the accused understood his section 10(b) Charter rights. The police could well have held off prior to their obtaining a statement from the accused. There was no urgency to the situation.

42 There is a cumulative effect with respect to both the section 8 and section 10(b) Charter breaches. I am satisfied the admission of the statement would bring the administration of justice into disrepute. Accordingly, the evidence of the statement is excluded pursuant to section 24(2) of the Charter.

43 In conclusion, the defence application to exclude the evidence with respect to the keys and the statement is allowed.

YOUNG PROV. CT. J.

cp/i/qw/qlscw/qlemo/qlbrl