

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

Cite as: R. v. Shea, 2010 NSPC 69

**Date:** November 24, 2010  
**Docket:** 2003314 - 2003318  
**Registry:** Halifax

Her Majesty the Queen

v.

Shawn Michael Shea

**DECISION**

**Judge:** The Honourable Judge Anne S. Derrick

**Heard:** October 18, 19 and 20, 2010

**Decision:** November 24, 2010

**Charges:** section 5(1) CDSA x 2; section 465(1) (c) x 2

**Counsel:** Timothy McLaughlin - Crown Counsel  
Brian Bailey - Defence Counsel

**By the Court:**

[1] Shawn Shea is charged with two counts of trafficking in controlled substances, cocaine and MDMA (ecstasy), the trafficking of which is alleged to have occurred between November 18 and December 21, 2008. He is also charged with unlawfully conspiring to traffick cocaine and MDMA (ecstasy) between these dates.

#### A Drug Arrest on December 20, 2008

[2] On December 20, 2008 at approximately 23:00 hrs there was a “take-down” on Highway 104 about 15 kilometers outside New Glasgow by the Street Crime Enforcement Unit for Pictou County. A red Pontiac Wave sedan was pulled over and the occupants, including the driver, Terrence Priest, were arrested. Mr. Priest lived in New Glasgow at 27 Maple Avenue. The vehicle he was driving belonged to Shirley Warrington, also from Maple Avenue in New Glasgow.

[3] A search of the vehicle’s back seat passengers produced three separate bags of pills and a bag containing white powder. The pills were handed over by Adam Bowles. The white powder was found on Jane Grey. The police officers also located a cell phone down Ms. Grey’s pants.

[4] The pills and the white powder were introduced into evidence at Mr. Shea’s trial as Exhibits 3 and 6 respectively. Through counsel, Mr. Shea conceded that Exhibit 3 contained 612 ecstasy pills and Exhibit 6 contained 14.1 grams of powder cocaine. Certificates of analysis for these drugs were admitted as Exhibits 4 (ecstasy) and 5 (cocaine). Mr. Shea did not admit to having anything to do with these drugs.

### The Drug Trafficking Charges

[5] The Crown submits that the ecstasy and cocaine seized on Highway 104 were obtained by Mr. Priest from Mr. Shea approximately four hours earlier in Halifax. In due course I will return to the Crown's evidence on the alleged drug transaction between Mr. Shea and Mr. Priest. That transaction is the trafficking for which Mr. Shea has been charged. Convictions for drug trafficking can only stand against Mr. Shea if I am satisfied beyond a reasonable doubt that he trafficked the ecstasy and cocaine to Mr. Priest in a transaction earlier in the evening of December 20.

### The Conspiracy Charges

[6] The Crown's conspiracy case is based primarily on intercepted telephone calls which the Crown alleges were calls between Mr. Shea and Mr. Priest. The Crown submits that I should infer from the content of these calls that Mr. Shea and Mr. Priest were conspiring to traffick in cocaine and ecstasy during the period of the calls, November 29, 2008 to December 20, 2008. For Mr. Shea to be convicted of the conspiracy charges I do not have to find that the objective of trafficking was achieved.

### The Intercepted Telephone Calls - Identifying the Speakers

[7] The Crown tendered into evidence twenty intercepted telephone conversations conducted almost exclusively between two males who never identified themselves or each other. Cst. Nicholas Pepler of the Halifax Regional Police Service Integrated Drug Unit testified about the calls. He was the primary investigator for Operation

Intrude, an investigation into Mr. Shea and Mr. Priest and others that started in October 2007. Operation Intrude was principally a drugs investigation.

[8] It was Cst. Pepler's evidence that all the intercepted calls from Operation Intrude were not placed into evidence at Mr. Shea's trial. He said for example, that there were approximately 23 calls between Intercepts # 3 and #4 that were not tendered in evidence.

[9] Cst. Pepler testified that he had listened to the intercepted calls and recognized the speakers in the calls as Shawn Shea and Terrence Priest. On one of the calls he also recognized the voice of Jeremy LeBlanc, another target of Operation Intrude. Cst. Pepler described Jeremy LeBlanc as a close friend of Mr. Shea's. Cst. Pepler who surveilled Mr. Shea in excess of ten times during Operation Intrude saw him in Mr. LeBlanc's company "a lot." He identified Mr. LeBlanc as "bi-racial" and living at 27 Langbrae Drive in Clayton Park, Halifax. He was known to drive his girlfriend's green Ford Focus. The Crown submitted that these details about Mr. LeBlanc are relevant to evidence contained in the intercepted calls.

[10] Cst. Pepler also described having had direct dealings with Jeremy LeBlanc more than a dozen times, including talking to him in person. He indicated that he had also listened to nearly 10,000 intercepted calls involving Mr. LeBlanc. He testified to his opinion that Mr. LeBlanc's voice can be heard on the first intercepted call placed in evidence. (Call #1, November 29, 2008)

[11] Cst. Pepler testified that he has known Mr. Shea for eight years. His interactions

with Mr. Shea had included arresting him and talking to him “once or twice” at court. He has also listened to between 8000 - 10,000 intercepts involving Mr. Shea including in excess of 50 intercepts where Mr. Shea identified himself on the call. Cst. Pepler indicated he has also listened to Mr. Shea’s interviews with police. Drawing from his exposure to Mr. Shea’s speaking voice, which he described as having distinctive characteristics, for each of the twenty intercepts Cst. Pepler gave his opinion as to which of the speakers was Mr. Shea.

[12] In the intercepted calls, Cst. Pepler identified certain phrases used regularly by one of the speakers as common to Mr. Shea’s speaking patterns. The speaker Cst. Pepler identified in the intercepts as Mr. Shea customarily said, “what’s up, buddy” as a greeting and “papa” or some variation using the word “papa” as a descriptor for the man he was speaking to.

[13] Terrence Priest was not someone with whom Cst. Pepler was familiar but he testified that to his knowledge, the other speaker on intercepted Calls 2 through 20 was Mr. Priest. There is evidence, which I will address shortly, that corroborates that belief.

[14] The Defence did not object to Cst. Pepler offering his opinion as to who was speaking on the intercepted calls. The Defence did not concede the identities of the callers on the intercepts, noting that no one identified himself or the other speaker by name at any point.

[15] The voices throughout the calls are consistent. By that I mean that the voice

identified by Cst. Pepler as Shawn Shea shows the same characteristics throughout the calls and is recognizable as the same voice throughout. The speaker does employ repeated phrases such as “what’s up, bud?” and “Papa.” Given Cst. Pepler’s experience with Mr. Shea, I am satisfied that he would know Mr. Shea’s voice both by its intonation and the content of its speech and has correctly identified his voice on the intercepts. I also accept that Cst. Pepler’s experience with Jeremy LeBlanc equipped him to reliably identify Mr. LeBlanc’s voice, which is heard on the first intercepted call.

[16] I am also satisfied that Mr. Priest’s voice has been correctly identified by Cst. Pepler. Cst. Pepler did not have the benefit of dealing with Mr. Priest and becoming familiar with his voice and its characteristics. However the voice he identified as Mr. Priest’s is consistent throughout the calls and identifiable as the same voice. The speaker tells Mr. Shea about the arrest on December 20 outside New Glasgow. The speaker in that call (Intercepted Call #19 - December 21, 2008 at 17:28 hrs) tells Mr. Shea that he and “Steph and...Jane and...Adam” were all charged with possession of the seized drugs and describes the discovery by police of the drugs on Adam and Jane just as the police evidence about the take-down indicated. The voice describing those events had to have been Terrence Priest’s voice and that voice is recognizable in the other intercepted calls.

[17] Therefore I am satisfied that the Crown established beyond a reasonable doubt that the intercepted calls were conversations between Mr. Shea and Mr. Priest with Mr. LeBlanc speaking in the first intercepted call with Mr. Shea.

[18] There is also the evidence of the telephone numbers used in the calls which were numbers linked to Mr. Shea, Mr. LeBlanc and Mr. Priest.

The Intercepted Calls from November 29 - December 20, 2008

[19] The calls occurred on November 29; and December 4, 6, 8, 9, 10, 16, 20 and 21. On some days there were multiple calls: on December 6 there were 2; on December 8, there were 2; on December 9, there were 4; on December 18, there were 2; on December 20, there were 4; and on December 21, there were 2. Four cell phone numbers were involved in the calls: 754-5222; 830-3366; 292-5825; and 830-2092. The two calls on December 21 were placed from a land line: 695-6743 with a subscriber address of 27 Maple Avenue in New Glasgow. 27 Maple Avenue was the address of Terrence Priest.

[20] Cst. Pepler testified that during Operation Intrude Mr. Shea used two cell phones: 292-5825 and 830-2092. Mr. LeBlanc's cell phone number was 830-3366.

[21] The intercepted telephone calls do not contain much information and largely involve two speakers making plans or arrangements to meet up. They start on November 29 in the early evening (18:19 hrs).

[22] Call #1 is a 47 second call initiated by Terrence Priest and answered by Jeremy LeBlanc. Mr. Priest wants to know what "Shea's other line" is because he keeps getting his answering machine. Mr. LeBlanc tells him that "Shea" has his phones off and is turning it back on "right now" which occasions Mr. Priest saying that he will

call “Shea” back in “like five minutes.”

[23] The Defence submits that it is significant that there is no call from Mr. Priest to Mr. Shea five minutes later on November 29. However, as I know from Cst. Pepler’s testimony that not all the intercepted calls from Operation Intrude were placed in to evidence, I do not conclude that no call occurred.

[24] Given that I am satisfied about the proof of the identity of the speakers, what Call #1 tells me is that Mr. Priest knew how to reach Jeremy LeBlanc and someone named “Shea.” Jeremy LeBlanc was able to assist in getting the “Shea” phone turned back on, presumably by “Shea”. I conclude that this reference to Shea is to Shawn Shea. All that I take from concluding this is that LeBlanc, Shea and Priest knew each other and were in contact.

[25] Call #2 was placed on Thursday December 4 at 13:04 hrs by Shawn Shea calling Mr. Priest. It is a 7 minute 5 second call. Mr. Shea reaches Mr. Priest where he worked at a retirement home. He asks Mr. Priest about his new job. Mr. Priest mentions that he is “off for the weekend today” and planning to go to the city, obviously referring to Halifax, “tomorrow” with his mother. Near the end of the call, Mr. Priest asks Mr. Shea if he will be around “tomorrow” and Mr. Shea says; “Yeah, for sure.”

[26] Call #3, lasting 4 minutes and 51 seconds, occurred on Saturday December 6 when at 08:57 hrs., Mr. Shea calls Mr. Priest and asks him, “What’s up, buddy?” Mr. Priest is making breakfast. Mr. Shea is wondering where Mr. Priest is. The



conversation makes it clear that Mr. Priest did go to Halifax but is now home and did not see Mr. Shea. He says he is going to come to the city “today”. Mr. Shea wants to know what his “problem” is and says: “You just don’t wanna hang with us, maybe you’re scared, or somethin’, bud?”

[27] Mr. Shea asks Mr. Priest if he is going to come to the city and how he will get there. He wonders if “Shirley” will drive him but Mr. Priest is looking to have his “buddy” drive him “right now” and says that Shirley probably won’t let him have her car because the tires are bald. I do know that on December 20, Mr. Priest was driving a car owned by a Shirley Warrington, likely the same Shirley referred to in the December 6 call.

[28] There is then some vague conversation where Mr. Shea speaks approvingly of Mr. Priest noting that he “did good.” He tells him a couple of times, “Nice one.” Mr. Priest introduces a new theme: “Is that good to go” to which Mr. Shea replies: “What, the stuff you just last had?” “Yeah” says Mr. Priest and they have the following exchange:

Mr. Shea: I don’t know, I don’t know - I think it could be, but

Mr. Priest: Okay. But the other stuff for sure, right?

Mr. Shea: Yeah

Mr. Priest: Okay. Cool, cool.

[29] There is some further talk about getting together at a hotel and having a few drinks. Mr. Priest sounds as though he’d like to do a little partying and suggests that

Mr. Shea should go back with him. He tells Mr. Shea he is “definitely” coming up to the city as soon as he gets his drive.

[30] Call #4 is some time later on December 6 at 13:24 hrs. It lasts 1 minute, 23 seconds. Mr. Shea calls Mr. Priest who is back home in New Glasgow. He tells Mr. Shea he was pulled over by police and subjected to a vehicle search. His “buddy” the driver got placed in the patrol car. Mr. Priest tells Mr. Shea he is “pretty sure they’re probably gonna stop us on the way home...” and says he’s thinking “we should just chill for the night.” Mr. Shea takes this decision in stride, telling Mr. Priest: “all right, Papa.”

[31] The inference I draw from this call is that Mr. Priest started out for Halifax as planned but returned home after being stopped by the police and decided not to venture out again.

[32] Call #5 is made on December 8 at 16:58. It is a 1 minute 11 second call from Mr. Priest to Mr. Shea. He tells him he is getting ready to go to the city, news that Mr. Shea responds to by saying: “Okay, cool.” Mr. Priest says he might stop first at the mall or “I might just see you first.” Mr. Shea seems to approve of this idea. The planned trip is intended to be quick: Mr. Priest advises Mr. Shea he will be leaving “around six o’clock” but not staying the night as he has to work in the morning. Testimony from one of the police officers indicated that the travel time between New Glasgow and Halifax is about one hour and thirty minutes. Mr. Priest is told by Mr. Shea to call him when he gets to the city.

[33] Call #6 comes in later in the evening of December 8, at 22:23 hrs. It too is very brief, lasting 1 minute, 23 seconds. Mr. Shea calls Mr. Priest to discover he did not make the trip to Halifax after all and now plans to come “tomorrow afternoon.” Mr. Priest is flexible about whether he sees Mr. Shea first or goes to the mall first but they agree he will come and collect Mr. Shea so they can go to the mall together. Mr. Shea suggests Mr. Priest just call him when he gets to the city.

[34] By December 8, Mr. Priest and Mr. Shea have been making plans to meet in Halifax for 10 days. Even though not all their calls are in evidence, I can infer from the content of the calls I have before me during this period that they have not managed to meet up yet. There is evidence that indicates this changes on December 9.

[35] On December 9, there are 4 intercepted calls between Mr. Priest and Mr. Shea. The calls start at 16:46 hrs, a 3 minute and 8 second call (Call # 7) made by Mr. Shea to Mr. Priest. Mr. Shea wants to know “What’s up, buddy?” and is told by Mr. Priest that he is just leaving the Halifax Shopping Centre and wants to meet up with him. Traffic is an issue because of the time of day and Mr. Shea suggests they meet at the Holiday Inn in Dartmouth off the old bridge. He tells Mr. Priest to call him when he’s on the old bridge.

[36] Mr. Shea calls Mr. Priest again about 45 minutes later at 17:33 hrs (Call #8). The call lasts 1 minute and 2 seconds. He is surprised to learn that Mr. Priest is on the new bridge. They agree to meet at Mr. Shea’s place. I heard evidence from Cst. Pepler that Mr. Shea had a residence at 40 Wheatstone Heights in Dartmouth although he rarely stayed there. This address is about 10 minutes by car from the Dartmouth side

of either of the bridges.

[37] It is another 45 minutes approximately before the next call (Call #9) at 18:10 hrs. The call is 38 seconds long. It's Mr. Shea again calling Mr. Priest. He wants to know "what you give me twenty-five and five?" which Mr. Priest responds to by saying "Yeah." "So, you gave me three all together?" asks Mr. Shea and Mr. Priest says: "Yeah." "All right, cool" is Mr. Shea's response.

[38] A while later, that same night, at 19:58 hrs, Mr. Shea calls Mr. Priest for 1 minute and 2 seconds. (Call #10) Mr. Shea apparently believes Mr. Priest to still be in the city because he invites him to "come to the Forum". But Mr. Priest is already headed home. This is greeted with obvious dismay by an upset Mr. Shea. He lets out a string of expletives as the news sinks in. He tells Mr. Priest that he should have told him he was leaving. Mr. Priest explains that he and his companions, referred to as "we" were "just...gettin' ansy...and we just left."

[39] Mr. Shea accepts this apparently unhappy state of affairs, "All right. All right, then" and they end the call.

[40] Mr. Shea and Mr. Priest talk again the next day, December 10, for a minute and 5 seconds at 17:45 hrs. When Mr. Shea calls, Mr. Priest is getting ready to go to the gym. He hasn't been able to access a text message from Mr. Priest. Mr. Priest is then obliged to explain what he had been trying to contact Mr. Shea about. On the call he can be heard pausing over his choice of words: "Yeah, well, - all it was sayin' was um, ah, I was just wonderin' if, if you still had that?" The inquiry is very vague but Mr.

Shea understands it immediately and says: “Oh, yeah.” Again, pausing as he poses the question, Mr. Priest asks, “...would it still be good tomorrow?” Mr. Shea confirms it will be and Mr. Priest indicates he should have a drive. He is told by Mr. Shea to “just give [him] a call.”

[41] Call # 12 occurred on December 16 at 17:16 hrs. Mr. Priest calls Mr. Shea who tells him he thought he was coming to Halifax. Transportation seems to have once again posed a problem for Mr. Priest who indicates he just got winter tires on “Shirley’s car” which will make it easier for him to “get up.” That meets with Mr. Shea’s approval, he says, “Nice one” and “It’s all right.” There’s a brief exchange about Mr. Priest’s plans to get back to the gym and get in shape. The conversation lasts for 1 minute and 14 seconds before it is interrupted by another caller on Mr. Shea’s line.

[42] Mr. Shea and Mr. Priest spoke next on December 18 at 15:29 hrs. (Call #13) The call lasts 1 minute and 5 seconds. Mr. Priest called Mr. Shea. He tells Mr. Shea he is thinking of coming up “tomorrow, or somethin.” Mr. Shea informs him that his phone is dying and he’ll call Mr. Priest back.

[43] Later that night, Mr. Priest calls Mr. Shea. The call (Call #14) placed at 21:44 hrs lasts 2 minutes and 31 seconds. There is some brief talk about Mr. Priest’s plans for the night - “probably gonna go out tonight have a few drinks” - and Mr. Priest asks, “...are them things a go yet?” Mr. Shea answers “Yeah” to which Mr. Priest says, “Oh, okay. Cool, cool.” He then suggests he could probably meet Mr. Shea the next day. Mr. Shea says, “Yeah, for sure.” There is then a discussion about Mr. Shea

organizing a raffle on a car to raise money for a friend's legal defence fund. The call concludes with Mr. Shea telling Mr. Priest to give him a call "tomorrow and pop down." Mr. Priest says he'll call "probably around eleven o'clock" the next day.

[44] If any call was made by Mr. Priest to Mr. Shea on December 19, it is not in evidence. They do talk again on December 20 however at 14:13 hrs for 57 seconds. (Call #15) Mr. Priest calls Mr. Shea to tell him he is on his way up to the city, news that is greeted with Mr. Shea's approval. He tells Mr. Priest a couple of times: "Nice one." Mr. Shea declines an invitation to go with Mr. Priest to the mall, telling him just to call him when he gets to the city. Mr. Priest is apparently travelling with a companion or companions as he uses "we" and "us" when he talks to Mr. Shea about going to the mall.

[45] After being told to call when he gets to the city, Mr. Priest asks Mr. Shea: "Okay, um, that's good to go, eh?" This vague inquiry is immediately responded to by Mr. Shea who tells him, "Yeah."

[46] Mr. Priest calls Mr. Shea at 18:10 hrs on December 20. (Call #16) It is a 1 minute and 5 second call. Mr. Priest is shopping and Mr. Shea wants to know if he is coming to get him "in a minute." Mr. Priest says he is and Mr. Shea asks him "...you know my buddy's there?" Mr. Priest says he thinks so and is told "the black guy" presumably as a way for Mr. Shea to identify which buddy he is referring to. Cst. Pepler testified that Jeremy LeBlanc was sometimes referred to as the "black guy."

[47] Mr. Priest calls Mr. Shea again about 45 minutes later at 18:54 hrs (Call #17).

They talk for 1 minute and 44 seconds. Mr. Priest tells Mr. Shea he doesn't "really remember how to get to his house" and is looking for directions. He gets some and asks: "Do you know what street it is, off of, Dunbrack?" Mr. Shea tells him it's Langbrae and says: "You go, you go right up towards his house." Then there's a change of plan with Mr. Shea directing Mr. Priest to meet him at "that McDonald's there."

[48] Cst. Pepler testified that Jeremy LeBlanc was, at the time, living at 27 Langbrae, directly off Dunbrack Street, an area in Clayton Park. A McDonald's restaurant is located in that neighbourhood. The evidence of Calls #16 and #17 with the references to Mr. Shea's buddy "the black guy" and "Langbrae" satisfy me that Mr. Shea was trying to help Mr. Priest find Jeremy LeBlanc's house so they could meet. That seems to have presented a challenge as Mr. Priest was unsure of where he was going and the meeting was shifted to the McDonald's restaurant.

[49] The final December 20 call is placed by Mr. Shea to Mr. Priest at 19:01 hrs. (Call #18) It lasts 29 seconds. Mr. Priest is uncertain about whether he was supposed to go down Dunbrack and Mr. Shea responds by asking him: "Why, what are you comin' right here?" But Mr. Priest is at the McDonald's and Mr. Shea tells him to wait and he'll be right there.

[50] Police monitoring the Shea/Priest calls headed for Clayton Park once they heard the 16:10 hrs call. (Call #16) The conversation lead them to believe that Mr. Priest was headed for a meeting with Mr. Shea in Clayton Park. It must have been the reference to “the black guy” whom police understood to be Mr. Shea’s associate, Jeremy LeBlanc, that focused them on Clayton Park. As I have indicated, Mr. LeBlanc was known to be living at a Clayton Park residence on Langbrae off Dunbrack Street.

[51] Cst. Pepler testified that the next call (Call #17) with Mr. Shea telling Mr. Priest to meet him at McDonald’s led to him parking at the McDonald’s. He arrived at 19:00 hrs. He was hoping, and expecting, to see Mr. Shea meet with Mr. Priest. He was able to identify a vehicle in the parking lot with a connection to Mr. Priest; it was the red Pontiac Wave that was registered to Shirley Warrington from New Glasgow. Parked about 75 feet away in a “pretty dimly lit” parking lot, Cst. Pepler saw a green Ford Focus pull up close to the Pontiac. The plates confirmed it to be the vehicle registered to Jeremy LeBlanc’s girlfriend. A front passenger in the Focus jumped out and got into the rear passenger seat of the Pontiac. The person Cst. Pepler observed was short and stocky like Mr. Shea. He could not discern the person’s race or any other particulars about his identity.

[52] Cst. Moreau with the RCMP Federal Drug Unit in Halifax working on Operation Intrude, was also conducting surveillance in Clayton Park on December 20. He observed the Ford Focus driving up to the red Pontiac in the McDonald’s parking lot from about 100 meters away. He also saw a male get out of the Ford and get into the rear seat of the Pontiac. He identified this person as a short, bigger male with either short or no hair. He believed it to be Shawn Shea based on past surveillance



where he had watched Mr. Shea get in and out of vehicles and go in and out of residences about 5 - 10 times.

[53] When the red Pontiac left the McDonald's parking lot, Cst. Moreau could see three passengers in the back seat. He followed the departing vehicles - the Ford also left at this time - and when directly behind the Pontiac saw three individuals in the back seat. He last saw the Pontiac at approximately 19:21 hrs. the approximate time when surveillance was broken off.

[54] Neither Csts. Moreau nor Pepler could say with certainty that the man they observed get out of the Ford Focus and get into the red Pontiac was Shawn Shea.

[55] There is no evidence as to where the Pontiac went after the police surveillance was stopped. Its whereabouts on December 20 from approximately 19:21 hrs until 23:00 hrs, when the Highway 104 take-down occurred, are unknown.

[56] The next day, December 21, Mr. Priest called Mr. Shea at 17:28 hrs. (Call #19) They talk for 3 minutes and 10 seconds. He tells Mr. Shea he just got out of jail, an obvious reference to having been held in custody overnight after the highway arrest. Although when he informs Mr. Shea about being pulled over he says the police told him that they had followed him "from New Glasgow", he also refers to the police saying there had been a meeting with somebody at McDonald's. Mr. Priest uses "we" when saying this: "...they were sayin' we made stops at ah, um, houses and we met somebody at McDonald's..." He tells Mr. Shea he does not know what the police are talking about. He also complains about being charged even though the drugs were

found on his passengers. He says that doesn't make sense.

[57] The call ends with Mr. Priest telling Mr. Shea the police seized his phone and that he is calling from his "house" phone. Mr. Shea wants to know if he is coming back to the city soon and when Mr. Priest says he will be, Mr. Shea proposes he call him when he gets to the city and "we'll go for coffee, or somethin'." The suggestion of going for coffee together did not come up in any of the previous calls.

[58] It is only about 30 minutes later than Mr. Shea calls Mr. Priest back. (Call #20) The conversation lasts 2 minutes and 32 seconds. He wants to tell Mr. Priest that he is throwing away his phone. Mr. Priest says he had thought of this but not yet mentioned it to Mr. Shea. He says: "I don't know, buddy. Fuckin' um, that, that's what I was gonna mention to ya. That's probably a good idea on your part." The seizure of Mr. Priest's phone by police has created a problem for making contact: Mr. Shea advises Mr. Priest "...don't talk on this line" and tells him to just leave him a message when he's down in the city.

### The Expert Evidence

[59] In addition to the evidence that identified the speakers on the intercepts and the connection between them and the phone numbers, the Crown called Cst. Craig Foley of the RCMP as an expert to give opinion evidence on price points for ecstasy and cocaine, and the question of whether the intercepted calls, which he had reviewed, could be considered guarded. With no Defence objection to his qualifications, Cst. Foley was qualified to give expert opinion evidence in relation to the packaging,

pricing, quantities, purchasing, sale, jargon, coded conversation, distribution, use, and trafficking of MDMA (ecstasy) and cocaine. During the cross-examination of Cst. Foley, at the Defence request, I also qualified Cst. Foley to give expert opinion evidence on the pricing of cannabis marijuana and its derivatives. The Crown conceded Cst. Foley's qualifications to offer this opinion evidence as well.

[60] Cst. Foley testified that drug transactions are planned, coordinated and very brief to minimize risk of detection. They are usually preceded by communication, routinely by cell phone calls and/or text messaging, about pricing, quantity and "meet" details. In Cst. Foley's opinion, these communications may be circumspect or "guarded" with the use of vague terms to frustrate police monitoring efforts.

[61] It was Cst. Foley's evidence that where there is an established relationship there is no need to resort to coded language to describe illegal substances as the parties are familiar with each other and the product. These conversations will tend to rely more on being circumspect about what is being discussed.

[62] Cst. Foley identified a number of examples in the intercepted calls that, in his opinion, are consistent with guarded conversation:

- Is that good to go? (Call #3 , December 6, 2008)
- What you give me twenty-five and five? So, you gave me three all together? (Call #9, December 9, 2008) Cst. Foley described these as very vague references by the speaker (Mr. Shea) trying to say something without really saying it.

- Call #10 where Mr. Shea reacted with such pronounced dismay at the news that Mr. Priest is on his way back to New Glasgow. In Cst. Foley's opinion the speakers had an understanding of what the subject of the conversation was but included no real details in their very vague exchange.
- I was wondering if you still had that? (Call #11, December 10, 2008) After a failed text message, the speaker tries to be very guarded about the content of the message. Both speakers are aware of what is being discussed without it being discussed. One speaker (Mr. Priest) intends to get the vaguely referenced item from the other speaker (Mr. Shea) the next day.
- Are them things a go yet? (Call #14, December 18, 2008) Both speakers are aware of what "them things" are, again, without any details being supplied in the conversation.
- That's good to go, eh? (Call #15, December 20, 2008) The speakers understand what is being discussed even though the exchange is extremely non-specific.
- The exchange when Mr. Shea is describing where he can be found. The speakers communicate in a guarded fashion about a location they both seem familiar with.

[63] Cst. Foley observed about the intercepted calls: "I don't know any two people who would have this much conversation without saying anything at all."

[64] Cst. Foley was also asked his opinion about pricing of ecstasy tablets and

powder cocaine. He testified that 613 tablets of ecstasy costing at that volume about \$3.50 per tablet could be purchased for about \$2200 and a half ounce of cocaine (14 grams) would cost \$800. The total would be \$3000. The “twenty-five and five” for a total of “three altogether” (the language used by Mr. Shea in Call #9) would, in Cst. Foley’s opinion, be consistent with the purchase of 613 ecstasy pills and 14 grams of powder cocaine.

[65] Cst. Foley acknowledged that these price points could fluctuate depending on market conditions, with a half ounce of cocaine costing as little as \$600. He said that \$3.50 per pill was a good median price for ecstasy.

[66] Cst. Foley gave opinion evidence, during cross-examination, on the pricing for marijuana. He agreed that marijuana is purchased for about \$200 - \$300 per ounce. When it was put to him that 10 ounces of marijuana could be purchased for \$3000 he said that purchasers buying a larger quantity could likely get it for less per ounce so that \$3000 might buy 12 - 13 ounces.

### Law and Analysis

[67] It is well settled law that a conspiracy charge requires the application of a three-part test, known as the *Carter* test after *R. v. Carter*, [1982] S.C.J. No. 47.

- 1) Has the Crown proven beyond a reasonable doubt the existence of the conspiracy?

- 2) Based on evidence only admissible against Mr. Shea, has the Crown proven that he was probably a member of the conspiracy?
- 3) Finally, if I find there was a conspiracy to which Mr. Shea was a probable member I must still determine, considering all of the evidence: is Mr. Shea guilty beyond a reasonable doubt of being a member of the conspiracy?

[68] As I have indicated, I am satisfied that the identity of the speakers on the intercepted calls has been proven beyond a reasonable doubt. The calls indicate to me that on December 4, 2008, Mr. Priest and Mr. Shea were quite familiar and comfortable with each other. They speak to each other over a series of five calls between December 4 and December 9, the day they finally meet in Dartmouth. The longest of these calls is the first one, Call #2 on December 4 which lasts 7 minutes and 5 seconds. Their calls have a “knowing” character to them: Mr. Shea and Mr. Priest focus in their brief calls on the issue of Mr. Priest coming to Halifax and meeting up with Mr. Shea. There is no extraneous or surplus discussion that would typically define a conversation between friends: no discussion of family or interests or hobbies or television programmes watched, sports, or news items or even the weather.

[69] There is an exchange on December 6 in which Mr. Priest wants to know if “that” is good to go and Mr. Shea clarifies that he is referring to “the stuff you just last had.” He says he thinks “it” could be but when asked about “the other stuff” confirms that it will be. In other words, Mr. Shea undertakes that the “other stuff” will be good to go as Mr. Priest is hoping. Earlier in the nearly 5 minute conversation Mr. Shea

sounds unimpressed that Mr. Priest had been in the city on December 5 and not seen him and wonders if he doesn't want to "hang" with them and is "scared."

[70] Mr. Priest doesn't in fact go to the city on December 6 as planned. He gets stopped on the way by police and subjected to a vehicle search. Returning to New Glasgow he calls Mr. Shea to advise him he is staying put for the night because he expects he'd be stopped on his way back from Halifax. The unmistakable message in this call is that Mr. Priest was reluctant to risk getting pulled over by police during a return trip from the city.

[71] On December 9, Mr. Priest makes a trip to Halifax and meets up with Mr. Shea sometime between 17:33 hrs and 18:10 hrs, the times of Calls # 8 and #9. Call #9 from Mr. Shea makes in plain that Mr. Priest delivered something to him: "Twenty-five and five" that "altogether" made "three." Close to 20:00 hrs that night, Mr. Shea is very upset to discover that Mr. Priest is on his way back to New Glasgow. It is clear this is unexpected and unwelcome news. The tone and content of Mr. Shea's reaction makes it evident that Mr. Shea did not want Mr. Priest to have left when he did, that there was some reason why he had hoped to meet up with him again that night, which was made impossible by Mr. Priest's decision to get going back home.

[72] An unsuccessful text message the next day, December 10, from Mr. Priest to Mr. Shea obliges Mr. Priest to explain what he had been trying to communicate with Mr. Shea about. It was about whether Mr. Shea "still had that" which Mr. Shea immediately says he does. There is no discussion about what "that" is but Mr. Priest indicates his intention to get a drive to Halifax to get it the next day.

[73] It is a some days later, December 18, when Mr. Priest, who has not made it to Halifax yet, asks Mr. Shea whether “them things” are “a go yet.” They are and Mr. Priest says he’ll probably come to Halifax the next day. The trip to Halifax occurs on December 20 and when he gets the call, Mr. Shea is pleased to hear that Mr. Priest is on the road. Mr. Priest asks if “that’s” good to go and he is told it is.

[74] Other than calls to arrange where to meet in the early evening of December 20, with McDonald’s near Dunbrack being the chosen location, Mr. Shea and Mr. Priest don’t speak again until later on December 21 when the topic of conversation is the highway take-down and the seizure of drugs and phones. The news quickly persuades Mr. Shea that he wants to get rid of his phone but he and Mr. Priest indicate their ongoing interest in maintaining contact and being able to meet up in the city.

[75] The telephone calls between Mr. Shea and Mr. Priest are notable for their brevity, their deliberately vague references to something that Mr. Shea obviously has and Mr. Priest wants, the need to meet, concerns about risking a police search, the decision to get rid of a phone following a police search and seizure and the absence of any other content that one would expect in the course of nineteen phone calls between friends or acquaintances. I was also struck by Mr. Priest carefully picking his words when he finds he has to tell Mr. Shea what was in the text message Mr. Shea had been unable to access. It is starkly apparent how carefully Mr. Priest chose his words during this call. So too, with the other calls that use vague terms to describe the commodity Mr. Shea has that Mr. Priest wants, it is not lazy slang that is being used, it is very deliberately chosen terms that are plainly understood by the speakers, terms that were intentionally employed to reveal nothing about what is being referred to.



[76] The telephone intercept evidence satisfies me beyond a reasonable doubt that the conversations between December 4 and 21, 2008 all related to the purchase of illegal drugs. They were calls that focused on planning for and arranging meetings to facilitate the purchase of illegal drugs. They were business calls to effect a common unlawful object. No other inference is reasonable given the duration and content of the calls.

[77] Suggesting that the calls were of an innocuous nature and could have been about anything, including any number of innocent purposes does not square with the evidence. I have no doubt about the nature of the calls, or the illegal nature of the enterprise that was being carefully skirted around by the deliberately vague references.

[78] The next two stages of the conspiracy analysis do not present much of an issue for me. I am satisfied that Mr. Shea, who was one of the speakers on the intercepted calls, was a probable member of the conspiracy with Mr. Priest to traffick in narcotics. The calls are direct evidence of Mr. Shea's probable involvement. Indeed, the evidence established beyond a reasonable doubt that Mr. Shea was a member of a conspiracy with Mr. Priest to traffick in narcotics which I find to have been ecstasy and cocaine.

[79] I am satisfied the conspiracy concerned ecstasy and cocaine on the basis of Cst. Foley's price point evidence, and I find that the "twenty-five and five" and "three altogether" references by Mr. Shea in Call # 9 are to the payment by Mr. Priest of \$3000 for cocaine and ecstasy. I reject the suggestion that such numbers could as

easily be in relation to marijuana.

[80] I therefore enter convictions against Mr. Shea on counts 3 and 4 of the Information, the offences of conspiracy to traffick cocaine and ecstasy contrary to section 465(1) of the *Criminal Code*.

### The Trafficking Charges

[81] The first issue I want to tackle in relation to the trafficking charges is whether the intercept evidence is admissible evidence on these charges. I find that it is and point to the cases identified by Crown counsel: *R. v. Koufis*, [1941] S.C.R. 481, *R. v. Falahatchian* (1995), 99 C.C.C. (3d) 420 (Ont. C.A.) and *R. v. Rochon* (2002), 167 C.C.C. (3d) 257 (Que. C.A.) As the Ontario Court of Appeal in *Falahatchian* noted at page 430, referring to *Koufis*: “The evidence that an accused is acting in furtherance of a common design is admissible not only on the charge of conspiracy but is also relevant to the substantive charge of possession for the purpose of trafficking.” The Quebec Court of Appeal held in *Rochon* at paragraph 107 that declarations made by co-conspirators with a view to carrying out the conspiracy are admissible not only in relation to the conspiracy charged but also on the substantive charge, in that case, the offence of murder.

[82] The Defence does not contest this settled principle. In discussing the evidence on the trafficking charges I will be referring to the intercept evidence I earlier reviewed in detail.

[83] On December 20, Mr. Priest came to Halifax to meet Mr. Shea. He was in the McDonald's parking lot where Mr. Shea had directed him to go, by 17:01 hrs. He was driving Shirley Warringham's red Pontiac Wave. There had been discussion in previous intercepts of him using Shirley's car. Mr. Shea was in the vicinity because the plan had been for Mr. Priest to meet him at an address on Langbrae. His friend, Jeremy LeBlanc was known to live on Langbrae. I am satisfied that Mr. Shea had guardedly referred to Mr. LeBlanc as "the black guy" in a call with Mr. Priest only 50 minutes earlier. The Shea/Priest meeting didn't occur at the LeBlanc Langbrae residence because Mr. Priest had difficulty finding it. That made a meeting at a local landmark, the McDonald's restaurant, easier.

[84] Mr. Shea spoke to Mr. Priest on the 'phone at 18:54 hrs and 19:01 hrs. while Mr. Priest was in the Clayton Park area. At the time of the 19:01 call, Mr. Priest was waiting at McDonald's. Within minutes of that call, the green Ford Focus registered to Mr. LeBlanc's girlfriend drove into the McDonald's parking lot and pulled up next to the Pontiac Wave. A short, stocky man with little or no hair got out and into the Pontiac. In the opinion of police officers experienced in surveillance of Mr. Shea, this person bore a strong resemblance to him. The Pontiac and the Ford left immediately. Police broke off surveillance of the Pontiac by 19:21 hrs.

[85] In written submissions dated November 1, 2010, the Crown has asserted that the 19:01 hrs call on December 20, 2008, "...taken in conjunction with the meeting at McDonald's in Clayton Park is supportive of either delivering, or sending controlled substances to Mr. Priest, either directly (delivery) by Mr. Shea or indirectly by sending the drugs with a third party."

[86] At 23:00 hrs on December 20, the Pontiac was pulled over outside of New Glasgow and \$3000 worth of cocaine and ecstasy was located on passengers in it. Mr. Priest had referred to having companions with him when he spoke earlier with Mr. Shea. The drug bust resulted in Mr. Priest having his phone seized. The intercept evidence indicates that this caused Mr. Shea to decide to get rid of his phone, a decision that Mr. Priest told him is a good idea given the circumstances.

[87] I have already found beyond a reasonable doubt that Mr. Shea and Mr. Priest were engaged in a conspiracy to traffic cocaine and ecstasy. It is the Crown's submission that not only did they conspire to traffic, they actually trafficked with Mr. Shea either delivering the drugs to Mr. Priest in the Pontiac Wave or facilitating the transfer of the drugs to Mr. Priest from a third party. To convict Mr. Shea of the trafficking charges I have to be satisfied beyond a reasonable doubt that the drugs later found on Mr. Priest's passengers came from Mr. Shea.

[88] First of all, I am satisfied that the short, stocky man who got into the Pontiac was likely Mr. Shea. At 19:00 hrs on December 20, Mr. Priest was waiting for Mr. Shea in the McDonald's parking lot. Neither of the two intercepted calls the next day on December 21 indicate that despite their determined efforts the night before, they failed to meet. The stocky man seen in the MacDonald's parking lot got out of a car associated with Jeremy LeBlanc, who lived nearby. When Mr. Shea and Mr. Priest talked on December 21 their calls were about what went wrong, the police take-down, and no mention was made that there had been any other problems the night before such as Mr. Shea failing to show up as planned. Although the identification of Mr. Shea was light on detail and alone would be inadequate, taken with all the evidence,

I am satisfied Mr. Priest was joined in the Pontiac by Mr. Shea as observed by the police officers.

[89] However, can I conclude beyond a reasonable doubt that Mr. Shea's presence in the Pontiac with Mr. Priest and the subsequent discovery of drugs on Mr. Priest's passengers constitutes proof beyond a reasonable doubt that Mr. Shea trafficked those drugs to Mr. Priest? Mr. Shea is presumed innocent until proven guilty beyond a reasonable doubt. While I think it is very probable that the drugs found in the highway take-down came from Mr. Shea, "very probable" is not proof beyond a reasonable doubt. The trafficking charges are supported by circumstantial evidence. That being the case, the Crown must establish that there is no reasonable inference consistent with innocence that can be drawn from the proven facts. (*R. v. Cooper (1977)*, 34 C.C.C. (2d) 18 (S.C.C.)) As restated in more recent cases, I must be satisfied beyond a reasonable doubt that Mr. Shea's guilt is the only reasonable inference to be drawn from the proven facts. (*R. v. Robbins 2008 NSCA 93*; *R. v. Liberatore 2010 NSCA 82*, paragraph 14)

[90] The cocaine and ecstasy found on Mr. Priest's passengers could have come from Mr. Shea. These could have been drugs that, according to the Crown theory, Mr. Priest had already paid for on December 9 with "twenty-five and five" a possible reference to a sum of three thousand dollars. But the highway drug bust happened on December 20. It also happened some time after Mr. Shea climbed into the Pontiac. The Pontiac's whereabouts over the intervening three and a half hours are unknown. The drugs could have been acquired from someone else in that time. The money apparently delivered to Mr. Shea on December 9 by Mr. Priest, the "twenty-five and

five” could have been for an earlier drug buy. There is nothing in the evidence that establishes a connection between that delivery and the events of December 20. The absence of that link and the unknown activities of the Pontiac between 19:21 hrs and 23:00 hrs leave room for reasonable doubt. Even Mr. Shea’s decision to get rid of his cell phone once he knows the police have Mr. Priest’s cannot be regarded as a conclusive link to the December 20 drug bust. It is as consistent with their drug business dealings up to this point and going forward.

[91] I have considered the evidence that informed me that Mr. Priest was pulled over about 15 minutes outside of New Glasgow and I have inferred that he would have been driving for over an hour to that point from Halifax. He therefore would have likely left Halifax sometime before 22:00 hrs. Nonetheless, that still left him and his passengers nearly two and a half hours in the city to acquire cocaine and ecstasy from someone other than Mr. Shea. While I don’t think that is likely to have happened, I am unable to say that I have no reasonable doubt about this possibility. A finding that the drugs located on Mr. Priest’s passengers came from Mr. Shea either directly or indirectly is not the only reasonable inference to be drawn from the facts I accept as proven.

[92] This is not to say that I think Mr. Priest and Mr. Shea were all talk about the drug business. I have no doubt there was trafficking going on that kept them interested in an ongoing relationship with each other. It is simply that I am not satisfied to the high standard required by the criminal law that the trafficking charges against Mr. Shea that relate to the drugs seized on December 20, 2008 are made out. I am therefore entering acquittals on the two drug trafficking charges.

