C63924

COURT OF APPEAL FOR ONTARIO

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

CHRISTOPHER SACCOCCIA

Appellant

APPELLANT'S FACTUM

PART I: STATEMENT OF THE CASE

1. The Appellant was charged that he:

    1. On or about the 28th day of May in the year 2014, in the City of Toronto in the Toronto Region, did have a controlled substance, to wit: heroin, in his possession for the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act*
    2. Further, that on or about the 28th day of May in the year 2014, in the City of Toronto in the Toronto Region, did have a controlled substance, to wit: cocaine, in his possession for the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act*
    3. Further that on or about the 28th day of May in the year 2014, in the City of Toronto in the Toronto Region, did have a controlled substance, to wit: MDMA, in his possession for the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act*
    4. Further that on or about the 28th day of May in the year 2014, in the City of Toronto, in the Toronto Region, did have in his possession proceeds of property, of a value exceeding five thousand dollars, to wit: approximately $21,815.00 in Canadian currency, knowing that all or part of the proceeds of the property were obtained by, or derived directly or indirectly from, the commission in Canada of an offence punishable by indictment, contrary to section 355(1) of the *Criminal Code*.

Supplementary Appeal Book, Volume 1 at Tab 2.

2. The Appellant was investigated, charged and tried as part of Project Battery – a large scale investigation of gang activity in the city of Toronto. 35 individuals were charged in connection with the investigation. A variety of investigative techniques were used by authorities to gather information: warrantless surveillance, warrantless installation of covert cameras in the condominium building where the Appellant lived, and the tracking of mobile phones (though not the Appellant's mobile phone in particular).

3. The Appellant was not an initial target of the Project Battery investigation. Over the course of warrantless surveillance of others and the monitoring of covert surveillance cameras installed in the common areas of the Appellant's condominium building Mr. Saccoccia was observed interacting with a target of the Project Battery investigation. A search warrant was sought and granted for the Appellant's condominium unit. A search of the Appellant's home provided incriminating evidence.

4. The Appellant joined a large group of co-defendants in challenging the legality of the covert surveillance cameras used in the investigation. Justice Code was appointed as a case management under s.551.7(3) of the *Criminal Code* to hear a global motion on behalf of all 35 accused. Legal Aid Ontario appointed a single counsel to advance this motion on behalf of all defendants. This motion was heard in combination with a motion to exclude evidence obtain via wiretap.

5. The motions before Justice Code were heard over 15 days beginning in May 2016. Both motions were dismissed by Justice Code – the motion relating to wiretap evidence was dismissed on June 27, 2016 and the motion relating to the covert cameras was dismissed on December 21, 2016.

6. The Appellant independently challenged the search warrant executed on his home and brought an application for a stay of proceedings pursuant to 11(b) of the *Charter of Rights and Freedoms*. Both motions were heard before the trial judge the Honourable Justice J. Thorburn of the Superior Court of Justice on May 1 and 2, 2017. Both motions were dismissed.

> *Ruling on Stay of Application Pursuant to s. 11(b)*, Supplementary Appeal Book, Vol 1. at Tab 3.
> *Ruling on Garofoli Application to Exclude Evidence,* Transcript of Proceedings May 3, 2017.

7. The Appellant subsequently entered a plea of not guilty. He did not contest the evidence advanced by the Crown. On May 8, 2017 the Appellant was convicted of three counts of possession of controlled substances for the purpose of trafficking and a single count of possession of proceeds of property obtained by crime over $5,000. On September 18, 2017 the Appellant was sentenced to a 33-month period of incarceration, a lifetime firearm prohibition, DNA order and order forfeiting property deemed to be obtained by crime.

> Transcript of Proceedings, May 8, 2017

8. The Appellant hereby appeals conviction and sentence.

9. Mr. Saccoccia's appeal is joined with those of his co-appellants Larry Yu, Ken Mai and Dat Quoc Tang. In order to avoid duplication of argument the co-appellants have divided common issues. Argument applicable to the interests of Mr. Saccoccia are found in the facta of his co-appellants. The Appellant adopts and relies on those arguments.

10. This factum will generally address arguments related solely to Mr. Saccoccia, namely that:

(A) The learned trial judge erred in dismissing the Appellant's s.8 motion

(B) The learned trial judge erred in dismissing the Appellant's 11(b) motion

(C) The sentence imposed was demonstrably unfit given the circumstances of the offence and the offender.

(D) Additional arguments in support of common issues.

PART II: SUMMARY OF THE FACTS

11. The Appellant, Christopher Saccoccia, was convicted of three counts of possession of a controlled substance for the purpose of trafficking and a single count of possession of the proceeds of crime over $5,000.

12. The Appellant was arrested, charged and tried as part of Project Battery a large scale investigation lead by the Ontario Provincial Police (OPP) and the Asian Organized Crime Task Force into the Asian Assassinz and the Project Originals two gangs believed to be operating in the city of Toronto. Associated with this investigation were two other large scale investigations – Project Rx (lead by the Toronto Police Guns and Gangs Task Force) and a Toronto Police homicide investigation. In 2013 authorities came to believe that the three investigations were related through gang warfare stemming from drug trafficking.

Facts Relating to S.8 Motion to Exclude Evidence

13. Project Battery resulted in the arrest of 35 people, including the Appellant, on May 28, 2014. The Appellant was not a target of Project Battery or the associated investigations. He lived at 1420-38 Joe Shuster Way, an individual, residential condominium unit within a larger high rise building. Authorities believed that members of the Asian Assassinz, a target gang of Project Battery, lived in and conducted illegal activity out of multiple units in 38 Joe Shuster Way.

14. Authorities involved in all three related project investigations used a variety of surveillance techniques[1] to gather information on the targets including:

- The use of a Mobile Device Identifier ('MDI') – an artificial cell tower used to gather identifying data on active cellphones within a small geographic area;

[1]The legality of these techniques is discussed in the facta of Mr. Saccoccia's co-appellants.

- The installation of cameras in the common areas of condominium buildings;
- Warrantless surveillance inside condominium buildings.

15. The police specifically targeted Ken Mai a suspected member of the Asian Assassinz, during the Project Battery investigation. Between December 4, 2013 and April 2, 2014, police entered the common areas of the Appellant's condominium building at 38 Joe Shuster Way a total of 9 times to investigate targets of the Project Battery investigation including Mai and others. They did so without authorization. Authorization to enter the building was granted on April 15, 2014. On January 29, 2014, police installed a covert surveillance camera in the hallway near Mr. Mai's unit number 1719. With authorization police installed an audio probe inside Mr. Mai's unit and also made three covert entries. Physical surveillance of Mr. Mai was also conducted. [2]

> *Agreed Statement of Facts, Joint Appeal Book, pp. 4718-4740*
> *ITO #2*, Supplementary Appeal Book on Individual S.8 Motion, Tab 6 at paras 7, 9-12.
> *Ruling on Garofoli Application to Exclude Evidence*, Transcript of Proceedings May 8, 2017, at para 12.

16. As a result of these investigative efforts police believed that Mr. Mai was operating as a mid-level drug dealer and maintaining the unit at 1719- 38 Joe Shuster Way for the sole purpose of storing, cooking, and selling controlled substances.

17. Mr. Saccoccia lived at 1420-38 Joe Shuster Way. The camera installed outside of unit 1719 captured the Appellant attending at total of five times. A camera was subsequently installed outside of the Appellant's unit number 1420. This camera captured Mr. Mai visiting the unit. Physical surveillance officers heard, but did not see, Mr. Mai entering unit 1420 using a key.

> Transcript of Proceedings, May 1, 2017 at p. 109-110, 121.
> *Ruling on Garofoli Application to Exclude Evidence*, Transcript of Proceedings May 8, 2017, at para 13.

[2] The lawfulness of the surveillance and search of Mr. Mai's residential unit is discussed in the facta of Mr. Saccoccia's co-appellants.

18. As a result of these interactions between Mr. Mai and Mr. Saccoccia police believed the Appellant to be involved in the illegal trade of narcotics. A search warrant was sought on May 16, 2014. This application was denied on the basis that insufficient grounds existed to believe that illegal drug activity was occurring inside Mr. Saccoccia's home. A search warrant was once again sought on May 23, 2014. Additional grounds were outlined in the information to obtain and the warrant was granted.

ITO #1, Supplementary Appeal Book on Individual S.8 Motion, Tab 4.
ITO #2, Supplementary Appeal Book on Individual S.8 Motion, Tab 6.

Facts Relating to 11(b) Motion

19. On May 28, 2014 a search warrant was executed on the Appellant's home at 1420-38 Joe Shuster Way in Toronto. 84.64 grams of heroin, 6.56 grams of cocaine and 1.77 grams of MDMA were located during the search. $21,815.00 in Canadian currency was also located. The Appellant was arrested, charged and held for bail. His then girlfriend, Claire Batler, was also arrested and charged.

20. The Appellant applied for and was denied Legal Aid coverage. He was unable to retain a lawyer for 10 months until a *Rowbotham* application could be brought. During this time, he attended court appearances personally, including several judicial pre-trials conducted with multiple Project Battery co-accused. The Appellant set preliminary hearing dates on a with or without counsel basis.

Transcript of Proceedings August 22, 2014, *Supplementary Appeal Book* Vol 1, Tab 19
Transcript of Proceedings September 25, 2014, *Supplementary Appeal Book* Vol 1, Tab 20
Transcript of Proceedings March 24, 2015, *Supplementary Appeal Book* Vol 1, Tab 22

21. During this time period the Crown, at the request of counsel for Mr. Saccoccia's then girlfriend and co-accused, offered to sever the Appellant's matter from the large group of Project Battery co-accused. As a condition of this offer the Crown sought a number of concessions from

the Appellant – namely, that he would not be challenging the general warrant that permitted surveillance of Mr. Mai's unit. This evidence was directly relevant to the Appellant as it provided police with evidence that allowed them to obtain the warrant to search Mr. Saccoccia's home. The Appellant was not prepared or able to make this concession without the guidance of counsel.

Transcript of Proceedings, May 1, 2017 at p. 38, 44
Respondent's Factum, *Supplementary Appeal Book*, at Tab 35.

22. In March 2015 the Appellant selected counsel to represent who agreed to so *pro bono* pending a *Rowbotham* application which was filed on July 31, 2015 and granted, on consent, on September 21, 2015. The Appellant and his co-accused girlfriend proceeded to their previously scheduled preliminary hearing in November 2015. The Appellant was committed to stand trial.

Transcript of Proceedings, March 24, 2015, *Supplementary Appeal Book Vol 1*, Tab 22
Email from Counsel, March 23, 2015, *Supplementary Appeal Book Vol 2,* Tab 40
Rowbotham Application Materials, *Supplementary Appeal Book* Vol 3, Tab 1.

23. Once in the Superior Court the Appellant was effectively rejoined with the broad Project Battery group of defendants. In May 2016, large scale group *Garofoli* motions, including a motion to exclude the evidence obtained by covert surveillance cameras at Mr. Mai's unit – evidence that directly implicated the Appellant – were argued by a small team of Legal Aid appointed counsel in front of Justice Code. Mr. Saccoccia joined this motion. As a result, trial dates could not be set until a decision had been rendered. On June 27, 2016 Justice Code delivered a ruling on the motion, save for the issue dealing with covert surveillance cameras. This issue required an expanded record. As a result, additional hearing dates were set. While waiting for the ruling Mr. Saccoccia's counsel conducted several judicial pre-trials in an effort to further narrow the triable issues. Ultimately trial dates were set to begin on May 1, 2017. On

December 21, 2016 Justice Code dismissed the motion. The Appellant's trial dates were confirmed.

> Transcript of Proceedings, May 1, 2017 at p. 94
> *Ruling on Stay of Application Pursuant to s. 11(b)*, Supplementary Appeal Book, Vol 1. at Tab 3 at paras 24-28.

24. Following the dismissal of an 11(b) and *Garofoli* motions the Appellant entered a plea of not guilty, an agreed statement of facts was read in and the trial judge was invited to make a finding of guilt. On September 18, 2017 the Appellant was sentenced to a 33-month period of incarceration.

PART III: ISSUES AND THE LAW

A. THE LEARNED TRIAL JUDGE ERRED IN DISMISSING THE APPELLANT'S S.8 MOTION

Background

25. The Appellant joined his co-accused in a motion heard before Justice Code challenging the legality of covert surveillance cameras in the common hallways of 38 Joe Shuster Way. This motion was argued by a single counsel appointed by Legal Aid to represent the interests of all legally aided parties affected by the evidence.

26. Having lost the motion to exclude the evidence of the camera search, the Appellant then brought a motion before Justice Thorburn challenging the issuance of the warrant on the basis that the ITO contained insufficient grounds.

27. The argument as to insufficiency focused on the following facts:

- Mr. Saccoccia was a latecomer to the investigation
- Mr. Saccoccia was not a suspected member of any of the gangs
- Mr. Mai resided in the same building as Mr. Saccoccia in unit 1791
- Mr. Mai did not sleep in unit 1719
- Covert entries in unit 1719 revealed large quantities of drugs
- Surveillance cameras were then placed in the common hallway on the 17th floor, beginning on January 30, 2014

- Mr. Mai was observed leaving unit 1719 without a winter jacket which led police to believe he was going somewhere in the building. Mr. Mai was observed visiting unit 1420.
- On April 23, 2014 a covert surveillance camera was installed outside of unit 1420
- The Appellant was observed to check his door 5-6 times before leaving his apartment

Investigative Reports, *Appeal Book on S.8 Motion*, Tab 11-16
ITO #1, Supplementary Appeal Book on Individual S.8 Motion, Tab 4.
ITO #2, Supplementary Appeal Book on Individual S.8 Motion, Tab 6.

28. The contact between Mr. Mai and Mr. Saccoccia can be summarized as follows:

(a) Between January 30, 2014 and March 14, 2014 the Appellant attended Mr. Mai's unit a total of five times.

(b) Between April 2, 2014 and May 20, 2014 Mr. Mai attended the Appellant's unit a total of five times:

(i) On one occasion surveillance officers heard, but did not see, Mr. Mai use a key to enter the Appellant's unit
(ii) On May 1, 2014 Mr. Mai attended unit 1420 on two occasions. He stayed for 15 and 50 minutes respectively. One the second occasions both men left the unit together.
(iii) On May 4, 2014 Mr. Mai visited unit 1420 carrying a gym bag. After entering the unit he stayed for about a minute. He closed the door behind him.
(iv) May 11, 2014 Mr. Mai visited unit 1420. He stayed for roughly 20 minutes and exited the unit carrying three bottles of beer.

ITO #2, Supplementary Appeal Book on Individual S.8 Motion, Tab 6 at paras 7, 9-12.
Ruling on Garofoli Application to Exclude Evidence, Transcript of Proceedings May 8, 2017, at para 12

29. On May 16, 2014 a search warrant was sought for Mr. Saccoccia's residential unit. Justice O'Donnell rejected the application on the basis of insufficient grounds. On May 23, 2014 a search warrant was once again applied for. Further information was added to explain why authorities believed that the evidence of a criminal offence could be located in unit 1420. The search warrant was granted by Justice O'Donnell.

ITO #1, Supplementary Appeal Book on Individual S.8 Motion, Tab 4.
ITO #2, Supplementary Appeal Book on Individual S.8 Motion, Tab 6.

30. The affiant's theory was that because Mr. Saccoccia and Mr. Mai visited each other and their respective units, and closed the doors behind them when doing so that Mr. Saccoccia was therefore a trusted associate of Mr. Mai's and was aware of and involved in his drug trafficking business. Further, because Mr. Saccoccia checked his door five to six times before leaving his apartment he therefore had items he wished to conceal.

ITO #2, Supplementary Appeal Book on Individual S.8 Motion, Tab 6 at paras 9, 14-16.
ITO #1 Supplementary Appeal Book on Individual S.8 Motion, Tab 4, at para 47, 57b.

Law

31. The applicant bears the burden of proof to invalidate a search based on prior judicial authorization pursuant to S.8 of the *Charter of Rights and Freedoms* on a balance of probabilities. The review analysis begins at a presumption of validity.

R v Collins, [1987] 1 SCR 265 at paras 21-22.
R v Sadikov, 2014 ONCA 72 at paras 83-89.

32. A search warrant review is not a hearing *de novo*. Rather, the reviewing justice is tasked with determining whether any reliable evidence exists (or remains if elements of the information to obtain have been excised) upon which the search warrant could have issued. A reviewing justice is not permitted to substitute their own view of whether the warrant should have issued for that of the issuing judge.

R v Araujo, [2000] SCJ No 65 at paras 57-59.
R v Morelli, [2010] 1 SCR 253 (SCC) at paras 42-43.
R v Sadikov, supra at paras 83-88.
R v Breton, (1994), 93 CCC (3d) 171 (Ont CA). While the *Garofoli* test was developed in the context of warrants to intercept communication the test is applicable to the issuance of a search warrant.

33. An application for a search warrant is made *ex parte* and supported by a sworn affidavit. The affidavit must provide the issuing justice with full, frank and fair disclosure of material facts. Every detail of police investigation is not necessary. The affiant must be clear and concise.

R v Araujo, supra at para 46.

34. Where the evidentiary record before the reviewing judge has no material differences from the record before the issuing judge, as it was in the case at bar, the test for review is whether there was some evidence before the issuing judge upon which that judge could, acting judicially, issue the warrant to search. In doing so the reviewing judge should consider reasonable inferences that can be drawn.

R v Arsenault, 2009 NBCA 29 at para 5.
R v Vu, [2013] 3 SCR 657 at para 16.

35. A reviewing judge is entitled to deference on appeal. Absent an error of law, a misapprehension of evidence, or a failure to consider the relevant evidence, an appellate court should decline to interfere with the reviewing judge's decision.

R v Ebanks (2009), 97 OR (3d) 721 (CA) at para 22
R v Grant (1999), 132 CCC (3d) 531 (Ont CA) at para 18.

36. The Appellant respectfully submits that the learned trial judge erred in holding that the warrant contained reasonable grounds to believe that controlled substances would be located at Mr. Saccoccia's private residence. The Supreme Court of Canada in *Morelli, supra,* held that reasonable grounds exist at "…the point at which credibly-based probability replaces suspicion." In the case at bar, the evidence before the issuing justice was limited to interactions between Mr. Mai and the Appellant. No drug transactions were observed in any fashion. The interactions between the two men are consistent with regular socializing between neighbours.

R v Morelli, *supra* at paras 127-129.

37. In assessing sufficiency, the totality of the ITO must be assessed. The assessment is taken from a common-sense approach by the issuing justice. The evidence is not to be parsed into individual components.

R v Breton (1994), 93 CCC (3d) 171 (Ont CA)
R v Morelli, *supra*

38. Mere suspicion is not enough to conclude that there is evidence in the place to be searched.

R v Persaud, [2016] OJ NO 6815 (ONSC) at para 144.
R v Campbell (2010), 261 CCC (3d) 1 (Ont CA) at para 54.

39. The facts set out in the ITO(s) do not support a credibly based probability that controlled substances would be found in Mr. Saccoccia's private residential unit.

40. In *R v Le, infra,* the British Columbia Court of Appeal quashed a warrant issued in similar circumstances. Mr. Le and his co-accused Ms. Liu were observed by surveillance teams attending the residence of and interacting with a man suspected of drug trafficking. Unlike the within appeal, the observational information in *Le* was corroborated with tips provided by confidential informants. Mr. Le and Ms. Liu were under heavy surveillance. Despite this, authorities did not have evidence that the two ever travelled from their own home directly to the residence of the suspected drug trafficker. The BCCA quashed the warrant, holding that the associations with the suspected drug trafficker and his home provided only suspicion that Mr. Le and Ms. Liu kept controlled substances in their own home.

R v Le, [2014] BCJ No 834 (BCCA)

41. Surveillance showed Mr. Saccoccia and Mr. Mai visiting each other's units a combined ten times over the course of four months. On only one occasion did Mr. Mai carry a bag. On one occasion Mr. Mai visited unit 1420 and, after staying for roughly 20 minutes left with three beer bottles. Interactions between the two men sometimes last a few minutes and other times lasted nearly an hour. No drug transactions were observed between the two men despite the significant surveillance efforts by authorities. In short, there was no evidence (other than the affiant's opinion) that Mr. Saccoccia was engaging in illegal drug activity beyond his association with Mr. Mai. There was no evidence that Mr. Saccoccia was specifically conducting drug activity in his

residential unit. The affiant opined that Mr. Saccoccia's habit of checking his front door was locked multiple times before leaving was consistent with a desire to conceal illegal activity. With respect, this behaviour is just as consistent with a desire to keep one's private residence safe for reasons other than concealing illegal activity.

42. It is a precondition of issuance that an ITO contain information that permits the issuing justice to conclude that there are reasonable grounds to believe that there is anything in the location to be searched that would afford evidence of the commission of an offence. There was just no basis for the issuing justice to conclude that Mr. Saccoccia's home would afford evidence of drug trafficking.

R v Prosser, 2016 ONCA 467 at paras 15-16.[3]

43. The breach of Mr. Saccoccia's privacy interests was serious given that his private dwelling home was searched. Admission of the evidence found during the search would bring the administration of justice into disrepute. These factors combined warrant the exclusion of the evidence.

R v Collins (1995), 99 CCC (3d) 385 (SCC)
R v Grant, [1993] 3 SCR 223

B. THE LEARNED TRIAL JDUGE IMPROPERLY DISMISSED THE APPELLANT'S 11(B) MOTION

Background

44. The Appellant was investigated, charged, and tried as a small part of Project Battery – a large scale investigation into gang crime in the City of Toronto. A search warrant was executed

[3] This case was distinguished from *R v Le* by this Court on a factual issue. Namely, that the ITO in Mr. Prosser's case contained information that connected his illegal activity to his home, though that information came from a confidential source it is unlike the facts in *R v Le* the confidential sources offered information only that Mr. Le and Ms. Liu were trafficking in drugs not that they were doing so out of or in connection with their home.

and the Appellant was arrested on May 28, 2014 – the global 'takedown' down date for the larger Project Battery investigation. He was charged with three counts of possession for the purpose of trafficking and one count of possession of proceeds of crime. Over 30 others were also charged on a single Information. The Appellant was released, on consent, the following day.

Transcript of Proceedings, May 29, 2014, *Supplementary Appeal Book*, Tab 16.
Ruling on Stay Application Pursuant to s. 11(b) of the Charter, May 1, 2017 at para 7.

45. At the Crown's discretion, Project Battery accused were divided into three groups in order to efficiently and effectively manage the prosecution. The Appellant was part of group two. All parties remained charged on a single Information. The Appellant was therefore subject to the election of his co-accused. An election for a preliminary hearing followed by a trial in the Superior Court by judge and jury was made. Several judicial pre-trials were held to narrow and manage the witnesses that each accused requested to hear from and the issues that were to be argued.

46. The Appellant was represented by counsel for his show cause hearing but had subsequent difficulty in retaining a lawyer. Legal Aid coverage was denied on the basis that his mother, employed as a teacher, was expected to contribute even though she earned income over the modest financial eligibility standards and had no legal duty to support her 34-year-old son. The Appellant submits that such a requirement is unreasonable and unconstitutional in the face of the *Charter* right to counsel.

Rowbotham Application Materials, *Supplementary Appeal Book Vol. 3*, at Tab 1.
R v Rowbotham (1998), 41 CCC 1 (ONCA)
R v Moodie, 2016 ONSC 3469.

47. Eventually the Appellant was able to find counsel who brought a *Rowbotham* application that was successful and consented to by the Crown. Even though the Ontario Court JPT justice repeatedly encouraged the Appellant to get counsel because he was concerned about delay, with respect, he did nothing to assist the Appellant in getting counsel and neither did the Crown.

48. The Appellant respectfully submits that both the JPT judge and the Crown could have taken a number of commonly used and available measures to assist the Appellant in obtaining counsel. They could have:

- Asked Legal Aid to provide duty counsel or a staff lawyer to provide alternatives to the accused, including pursing a *Rowbotham* application
- Appointed *amicus* to explain the options for obtaining counsel
- Could have advised the Appellant of the newly created *Rowbotham* pilot project at the Toronto Superior Court administered in part by Legal Aid[4]
- Could have asked a senior criminal counsel to assist *pro bono* the Applicant on a limited retainer basis to advise the Appellant on his options

49. The Appellant submits that the Crown consent to the *Rowbotham* is a clear concession that the Appellant was constitutionally due state funded counsel – something it and Legal Aid ought to have figured out at the very beginning of the process and not more than a year later. As such the learned trial judge's ruling that characterized defence counsel's short delay for three months to perfect the *Rowbotham* as defence delay, was misplaced.

50. The only roadblock to obtaining counsel was a constitutional failure of the state the Crown's repeated lament that defence counsel was needed for it to get concessions to move the case forward ought to have been heard by its own agencies and the court.[5]

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[4] https://www.legalaid.on.ca/en/info/rowbotham_pilot.asp - The program referred to on this website is an expansion of the Toronto Superior Court project that was in place at the material time.

[5] The Ministry of the Attorney General is in a constitutionally unique role to act fairly to an accused and fund his defence and is not in conflict doing so. (see: *Ontario v Criminal Lawyers' Association of Ontario*, [2013] 2 SCR 3).
Courts generally should be aware of the commitment of the last government to raise the inadequate funding up to the poverty or LICO line within 10 years (see: *R v Moodie,* 2016 ONSC 3469.)

51. This court has commented in *Manasseri, infra* that that where the state "…chooses to prosecute [both] accused jointly, it must remain vigilant that its decision to proceed jointly does not compromise the s.11(b) rights of an individual accused." In the context of a project case it was constitutionally imperative for the Crown to assist the Appellant in securing a *Rowbotham* order rather than merely referring him to contact their colleagues in the civil law office. Creating a solution for the problem that many accused faced would have ensured a timely prosecution.

R v Vassell, 2016 SCC 76 at para 4-5.
R v Manasseri, 2016 ONCA 703 at para 323

52. The Crown's argument, which was accepted by the trial judge, that the Appellant was to blame for not getting a severance earlier due to not having counsel is an error. Given the role that both the court and the Crown had in denying him his right to funded counsel. Besides, Mr. Saccoccia did not delay when he acting in person. He attended judicial pre-trials. He set preliminary hearing dates on a with or without counsel basis.

53. Importantly, his search for counsel did not delay the progress of his matter. He attended global judicial pre-trials without counsel. Most importantly, he set preliminary hearing dates on a with or without counsel basis.

54. The preliminary hearing for group two of the Project Battery prosecution was scheduled to begin October 19, 2015 and last 6 weeks. The evidence relevant exclusively to Mr. Saccoccia's (and his co-accused Ms. Batler's) interests lasted only two days.

55. The Appellant was granted a *Rowbotham* order on September 21 2015. On September 22, 2015 newly retained counsel for Mr. Saccoccia advised the court that they were retained and prepared to proceed with the previously scheduled preliminary hearing.

56. Once the Appellant was represented by counsel both he and his then girlfriend and co-accused Claire Batler were severed from larger Project Battery prosecution. Evidence relating to

the Appellant and Ms. Batler was heard together on November 17 and 18th, 2015. Counsel conceded committal for the Appellant on November 24, 2015. Ms. Batler made arguments on committal and was discharged. The Appellant was formally committed to stand trial in the Superior Court of Justice on December 3, 2015.

57. The Appellant joined his co-accused in the motion heard before Justice Code challenging legality of covert surveillance cameras in the common hallways of 38 Joe Shuster Way. This motion was argued by a single counsel appointed by Legal Aid to represent the interests of all legally aided parties affected by the evidence.

58. The motion to exclude the camera evidence was heard along with a challenge to wiretap evidence that did not relate to the Appellant. The motion began on May 9, 2016 and was heard over the course 15 days concluding on December 13, 2016.

59. The complete chronology is set out in Appendix A.

Law

60. The *Charter of Rights and Freedoms* provides that an individual charged with a criminal offence has the right to be tried within a reasonable time. The meaning of 'reasonable time' has been defined by the Supreme Court of Canada as 18 months for cases tried in the provincial court and 30 months for those tried in a superior court like the case at bar.

R v Jordan, 2016 SCC 27

61. The Appellant was charged in May 2014, roughly 2 years before the Supreme Court of Canada released the *Jordan, supra*, decision. Calling out the 'culture of complacency' in the criminal justice system the Supreme Court set presumptive ceilings for delay. The defendant bears the onus of establishing that the total delay, absent any defence delay and/or delay attributable to exceptional circumstances, exceeds the presumptive ceiling. If the delay exceeds

the 18 or 30 month cap the onus shifts to the Crown to justify the delay. Delay can be justified where exceptional circumstances exist, including a particularly complex case.

R v Jordan, *supra*

62. Further, because the Appellant was charged before the release of *Jordan, supra*, the transitional exception applies to allow for the parties' reasonable reliance on the previous state of the law. Though much of the prosecution was carried on prior to the release of *Jordan, supra* the law nevertheless applies. As the Supreme Court commented in *R v Cody, infra* "The *Jordan* framework now governs s.11(b) analysis and, properly applied, already provides sufficient flexibility and accounts for the transitional period of time that is required for the criminal justice system to adapt."

R v Cody, 2017 SCC 31

63. While entitled to rely on the pre-*Jordan* regime it should be noted that prior to *Jordan* courts were critical of the Crown for not taking measures (like severance) to move cases forward. The Appellant submits that the failures of the Crown to take active measures to move the case forward caused unnecessary delay under both the *Jordan* and pre-*Jordan* regime.

64. Under the *Jordan, supra*, framework the defendant is no longer required to demonstrate prejudice. Once the defendant has established that the delay has breached the presumptive ceiling prejudice is presumed. The Supreme Court was clear that this is not a rebuttable presumption, the absence of prejudice cannot be used to justify delay.

R v Jordan, *supra* at para 54

65. The timeline on delay begins when the Information is sworn. In the case at bar this is the same date as arrest: May 28, 2014. The timeline on delay ends once a verdict has been reached and a sentence imposed. In the case at bar the total delay as of May 1, 2017 (the date the 11(b)

motion was argued) was 35.5 months. The total delay, including the trial and sentencing was 39.5 months.

R v Gandhi, 2016 ONSC 5612
R v JM, 2017 ONCJ 4
R v Formusa, 2017 ONCJ 236
R v Ashraf, 2016 ONCJ 584

The learned trial judge erred in attributing defence delay to the Appellant's inability to retain counsel

66. Defence delay is either: periods of delay specifically waived by the defence or periods of delay 'caused solely by the conduct of the defence.' Defence delay includes time where the defence either directly caused the delay or is found to have engaged in behaviours to deliberately cause delay as a tactic. Defence delay does not include actions "…legitimately taken to respond to the charges…the defence must be allowed preparation time, even when the court and the Crown are ready to proceed. In addition, defence applications and requests that are not frivolous will also generally not count against the defence." In *R v Cody, supra* the Supreme Court further expanded on the meaning of defence delay: "To determine whether defence action is legitimately taken to respond to the charges, the circumstances surrounding the action or conduct may therefore be considered." In the case at the bar, the Appellant respectfully submits that there was no defence delay. A brief period of 2 months and 3 weeks can be attributed to exceptional circumstances. The Appellant requested and was granted an adjournment of his first scheduled sentencing date (from June 27, 2017 to September 18, 2017) because he was suffering from a serious bacterial lung and blood infection that required hospitalization.

R v Jordan, supra, at para 61, 63-66.
R v Askov, [1990] 2 SCR 1199 at p. 1127-1228.
R v Cody, *supra* at para 32.

67. The total delay, from May 28, 2014 to September 18, 2017 is 39 months and 3 weeks. Less delay caused by an exceptional circumstance of 2 months and 3 weeks the net delay is therefore **37 months.** This is 7 months over the *Jordan* presumptive ceiling.

68. The learned trial judge found that there was 7 months of defence delay stemming from the Appellant's inability to retain a lawyer. Less the 7 months of defence delay, the 35. 5 months of total delay was reduced to 28.5 months net delay and within the *Jordan* time limits. Further, Her Honour held that exceptional circumstances justified any delay above the 30 months ceiling.

Ruling on Stay Application Pursuant to s. 11(b) of the Charter, May 1, 2017 at paras 38-40, 42-44

69. The Appellant respectfully submits that the trial judge erred in attributing 7 months of delay to the Appellant for his inability to retain counsel. The Appellant made best efforts to retain counsel – applying for Legal Aid coverage and diligently appealing the decision twice. Once a final decision was made by Legal Aid on October 27, 2014 the Appellant was diligent in his efforts to find counsel who would assist him in bringing a *Rowbotham* application for state funded counsel. The Appellant attended each of his court appearances (including multiple in court judicial pre-trials) and participated in the process, keeping the Crown and the court updated not only on his efforts to retain counsel, but he kept the case moving. Preliminary hearing dates were set despite the Appellant's lack of counsel. As a result, no actual delay was occasioned by the length of time the Appellant required to retain counsel. Once counsel was retained the preliminary hearing proceeded as scheduled – no adjournment or further court days were made necessary as a result of the Appellant's recently retained counsel.

Transcript of Proceedings, May 1, 2017 at p. 33,34, 36

70. The time necessary to find and retain counsel is, to borrow the phrasing of the Supreme Court of Canada in *Cody*, *supra*, a "defence action(s) legitimately taken to respond to the charges [and therefore] fall outside the ambit of defence delay." This should be the case here, given that

the State just got it wrong in denying this Applicant his constitutional right to state funded lawyer. He was then forced to apply to the court for relief, after poking around in the blind, without any help from the Crown or the court in navigating the process, such as appointing amicus or using existing state funded legal aid on-staff lawyers to help navigate the process.

R v Cody, supra at para 29

71. The learned trial judge held that the Appellant's inability to retain a lawyer caused delay because the Crown, as early as November 26, 2014, was prepared to sever the Appellant and his then girlfriend and co-accused from the larger group. The Appellant's lack of counsel caused delay because the Crown would only agree to severance if the Appellant made certain undertakings relating to the larger *Garofoli* issues. Without counsel the Appellant could not make these undertakings. Further, the Crown felt that it could not exercise its discretion to sever the Appellant and his then girlfriend (who was represented by counsel) because it would prevent Mr. Saccoccia from relying on the submissions of counsel for the other defendants as it related to the *Garofoli* issue. The Crown argued that severing the Appellant in such a situation would have amounted to sharp practice. Again, it is submitted that actions such as appointing counsel for this purpose would have quickly and easily solved this problem. To blame the accused for actions taken without counsel or for the delay in counsel bringing the application for a Rowbotham, is perverse. With great respect this turns the state's failure to properly manage a system to insure appointment of funded counsel for indigent accused on its head and makes the unconstitutional denial of counsel the accused's fault.

Ruling on Stay Application Pursuant to s. 11(b) of the Charter, May 1, 2017 at para 40.
Transcript of Proceedings, May 1, 2017 at p. 60

72. Preliminary hearing dates were set on November 26, 2014 – the same day the Crown introduced its offer to sever with undertakings. To suggest that the Appellant caused delay

because he did not have counsel requires speculation that earlier preliminary hearing dates could be obtained. And besides, as stated the state failed in not providing funded counsel earlier.

Email from Crown Counsel, *Supplementary Appeal Book, Vol 2.* at Tab 38.

The learned trial judge erred in finding an exceptional circumstance due to complexity

73. The presumptive ceilings set in *Jordan* reflect the complexity of cases heard before superior courts in the current environment. Only particularly complex cases may justifiably exceed the presumptive ceiling. Assessing complexity "…requires a qualitative, not quantitative assessment. Complexity is an exceptional circumstance only where the case as a whole is particularly complex." A finding of complexity does not allow for a discrete period to be deduced from the overall delay. Rather, the application judge is to consider the whole of the delay against the complexity of the case.

R v Cody, supra at para 63 and 64.

74. In the case at bar the learned trial judge held that the case was complex and required more time to be tried. Specifically, the *Garofoli* motions heard before Justice Code were "…considerably longer and more complex by the virtue of the number of Applicants (35) and the number of issues." Therefore, the learned trial judge held, 6 of the 11 months it took to address the *Garofoli* motions before Justice Code should be deemed an exceptional circumstance due to the complexity of the proceedings.[6]

Ruling on Stay Application Pursuant to s. 11(b) of the Charter, May 1, 2017 at para 47.

75. The learned trial judge erred in attributing a discrete period to the complexity of the case. The Supreme Court was clear in *Cody*, *supra* that the net delay should be considered alongside the level of complexity in determining if the time period over the *Jordan* ceiling can be justified.

R v Cody, supra at para 63 and 64

[6] It should be noted that Her Honour erroneously notes the final Justice Code ruling on the group *Garofoli* motions as December 3, 2016 – the ruling was released on December 21, 2016.

76. Further, the trial judge erred in holding that the case was a complex one. The complexity analysis considers the case as whole. This Court commented on the issue of case complexity in its decision in *R v Picard, infra*: "A case can be complex in the earlier stages and require extensive disclosure, the compiling of expert evidence and numerous witness statements, only to be made simpler and more straightforward when it comes time for trial."

R v Picard, 2017 ONCA 692 at para 62

77. In the case at bar 35 persons were charged with serious offences, some related to a criminal organization. Charges resulted from the use of controversial and multipart investigative techniques. The defence necessarily and properly challenged the admission of evidence arising from these investigations in the motions heard before Justice Code. The materials before Justice Code were multifaceted and involved– requiring substantial evidentiary records and 15 days of court time.[7] The motions argued before the case management judge were essential to not just the Appellant but to his co-accused as well. Efforts were made to efficiently and effectively deal with the matters. The Appellant cannot be faulted for choosing to join these motions as they had a direct impact on the evidence in his case. Rather, it is the obligation of that state to ensure a timely and efficient prosecution – the Crown must have a realistic plan for taking charges to trial within a reasonable time.

R v Auclair, 2014 SCC 6

78. However, this complexity was restricted to the evidence heard before the case management judge. Absent those proceedings the Appellant's case proceeded in just four days –

[7] Further, the length of time necessary to complete the motions before Justice Code was exacerbated by the failure of the involved officers to provide sufficient notes and reports. For example, Detective Constable Frigon did not bring his memo book to court when he testified. When he returned with his notebook on another day there was no mention of the interaction with condominium management staff that was relevant to the investigation and the matter before the court. (Testimony of Detective Constable Frigon, *Transcript* Vol. 4, p. 89,103.)

two days of evidence at the preliminary hearing and two days of motions before the trial judge in the Superior Court of Justice.

79. When considered overall the Appellant's case was not an overly complex one. The complexity of the case cannot be used to justify delay over the presumptive *Jordan* ceilings.

80. Regardless of the complexity, it is clear that the lack of appointment of counsel at the beginning of the proceeding was the state's liability. This prejudiced the accused's ability to move the case forward as he clearly desired.

C. THE SENTENCE WAS DEMONSTRABLY UNFIT FOR THE CIRCUMSTANCES OF THE OFFENCE AND THE OFFENDER

81. The Appellant was sentenced to a 33-month period of incarceration on July 21, 2017.

82. Crown counsel sought a global sentence of 7 years. The defence sought a sentence of 2-3 years.

Reasons for Sentence, at paras 39,40.

83. The Appellant was 34 years old and had no criminal record at the time of his arrest. He was steadily employed in a technical support centre and later in the production of digital media content following his graduation from high school.

Reasons for Sentence, at paras 17, 32.

84. In 2007 the Appellant's car was struck by a vehicle running a red light. He sustained serious back injuries and was prescribed Oxycontin for pain management. Shortly after the accident Mr. Saccoccia's father passed away from cancer. The Appellant developed an addiction to Oxycontin in response to his physical and emotional difficulties.

Reasons for Sentence, at paras 18,19.

85. The Appellant's physician noted addictive behaviours and stopped prescribing Oxycontin completely. The Appellant began obtaining the drug illegally and shortly thereafter turned to heroin to satisfy his addiction.

Reasons for Sentence, at para 20.

86. Following his arrest in May 2014 the Appellant made significant and successful efforts to regain his life and shed his addiction. He participated in one-on-one counselling to address the underlying reasons for his addiction and participated in a methadone program. He submitted to weekly drug tests in order to remain in the program. The Appellant provided the trial judge with a letter from Breakaway Addiction Services documenting his successful participation in their program and their optimistic opinion on his future.

Reasons for Sentence, at para 23 -25.

87. Mr. Saccoccia's family also submitted letters of support. They noted that he was distant from them during his period of addiction but that since his arrest his relationships with them have considerably improved and he now enjoyed their full support.

88. The learned trial judge correctly noted that the most serious charge Mr. Saccoccia was to be sentenced was possession of heroin for the purposes of trafficking. Further, she fairly noted that courts have found heroin to be a destructive and dangerous drug.

Reasons for Sentence, at para 42.

89. The learned trial appropriately considered the role of the offender (in this case, a lower level dealer with lower moral culpability) and the Appellant's 'excellent' chance of rehabilitation. Further, Her Honour noted that a term of incarceration may negatively affect the significant and positive progress the Appellant has made with his addiction.

Reasons for Sentence, at para 46.

90. The learned trial judge erred in finding that general denunciation and deterrence required a sentence of 33 months. The following cases involve similar quantities of heroin with sentences of less than two years:

- *R v Goncalves*, 2011 ONSC 2577 (aff'd 2012 ONCA 139) – 39.52 grams of heroin, 2 years in custody.
- *R v Zamini*, 1999 OJ No 3780 (CA) – 50 grams of heroin, 2 years less a day in custody.
- *R v Nguyen*, 2003 BCCA 291 – 62.3 grams of heroin, 2 years less a day.

91. The Appellant's significant mitigating factors – including that he was addicted to heroin at the time of the offence but had made significant and positive efforts towards full rehabilitation – made a sentence at the very bottom of the range appropriate.

92. Finally, a sentence can be reduced where state misconduct exists but does not rise to the level of a *Charter* breach. This Court specifically has held that delay short of unconstitutional delay can lead to a sentence reduction.

> *R v Nasogaluak*, 2010 SCC 6 at para 53.
> *R v Bosley* (1992), 18 CR (4th) 347.

D. ADDITIONAL SUBMISSIONS

93. The Appellant has had the opportunity to see the draft facta of the co-appellants, and would highlight the following clarifications and additions to the argument and case law.

94. With respect to the MDI and the covert cameras, it is submitted that it has been a longstanding requirement that since *R. v. Thompson, infra*, that the police take steps to protect the privacy or section 8 interests of innocent third parties. Not doing so or not doing it reasonably or sufficiently is a section 8 violation. That was not done here in either the case of the MDI or the hallway cameras. In the case of the MDI the police did not follow the agreed upon

restrictions, namely three minutes on and two minutes off. In any event even that was too broad vis a vis the rights of third parties.[8]

R. v. Thompson, [1990] 2 S.C.R. 111.

95. Further, in assessing the privacy rights of the Appellants and specifically Mr. Saccoccia, regarding the insertion of the camera without warrant the Supreme Court of Canada has noted, starting in *R v Tessling, infra*, and more recently in *R v Spencer, infra,* and *R v Marakah*, *infra* that privacy is an evolving notion. It includes the idea of anonymity in public places, protection from spying and other electronic trespasses on privacy, and a reasonable expectation of privacy of texts sent to third parties.

R v Tessling, 2004 SCC 67
R v Spencer, 2004 SCC 43
R v Marakah, 2017 SCC 59

96. As noted in the Appellant Yu's factum, the public spying by camera from, say neighbours, is restricted by the common law privacy right recognized by the tort of intrusion upon seclusion, see *Jones v Tsige,* 2012 ONCA 32. Other examples of the restricted use of Cameras in public or semi-private spaces include in the employment context., see: *R v Jarvis*, 2017 ONCA 778; *Woodstock (City) v Woodstock Professional Firefighters' Association*, 2015 CanLII 20641 (ON LA); *Stewart v Elk Valley Coal Corp*, 2017 SCC 30. Also, such intrusion could be a criminal violation of privacy, supporting a conviction for mischief to property, see: *R v Lebenfish*, 2014 ONCJ 130 (OCJ).

97. As a result, it is submitted that the police conduct here is not excusable on the basis of good faith as the police should have been aware of the evolving case law. Besides, the courts

[8] A discussion of the privacy problems in the popular media can be found here: https://www.theglobeandmail.com/technology/tracking-our-phones-how-stingray-devices-are-being-used-by-police/article29322747/

have always cautioned the police to get a warrant when in doubt, see for example: *R v Silveira,* [1995], 2 SCR 297.

PART IV: REMEDY REQUESTED

98. The Appellant asks this Honourable Court to allow the appeal, set aside the conviction and enter an acquittal, or alternatively enter a stay or alternatively, order a trial, or in the alternative, reduce the sentence.

It is estimated that the Appellant's oral argument will take 2 hours

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Toronto, this 30th day of July 2018.

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SCHEDULE "A" AUTHORITIES TO BE CITED

R v Araujo, [2000] SCJ No 65

R v Arsenault, 2009 NBCA 29

R v Ashraf, 2016 ONCJ 584

R v Askov, [1990] 2 SCR 1199

R v Auclair, 2014 SCC 6

R v Bosley (1992), 18 CR (4^{th}) 347.

R v Breton, (1994), 93 CCC (3d) 171 (Ont CA).

R v Campbell (2010), 261 CCC (3d) (Ont CA).

R v Cody, 2017 SCC 31

R v Collins, [1987] 1 SCR 265

R v Collins (1995), 99 CCC (3d) 385 (SCC)

R v Ebanks (2009), 97 OR (3d) 721 (CA)

R v Formusa, 2017 ONCJ 236

R v Gandhi, 2016 ONSC 5612

R v Garofoli (1990), 60 CCC (3d) 161.

R v Goncalves, 2011 ONSC 2577 (

R v Grant, [1993] 3 SCR 223

R v Grant (1999), 132 CCC (3d) 531 (Ont CA)

R v JM, 2017 ONCJ 4

R v Jordan, 2016 SCC 27

R v Le, [2014] BCJ No 834

R v Marakah, 2017 SCC 59

R v Manasseri, 2016 ONCA 703

R v Moodie, 2016 ONSC 3469

R v Morelli, [2010] 1 SCR 253 (SCC).

R v Nasogaluak, 2010 SCC 6.

R v Nguyen (2011), 273 CCC (3d) 37.

R v Nguyen, 2003 BCCA 291

Ontario v Criminal Lawyers' Association of Ontario, [2013] 2 SCR 3

R v Persaud, [2016] OJ NO 6815 (ONSC).

R v Picard, 2017 ONCA 692

R v Prosser, 2016 ONCA 467

R v Rowbotham (1998), 41 CCC 1 (ONCA)

R v Sadikov, 2014 ONCA 72.

R v Spencer, 2004 SCC 43

R v Tessling, 2004 SCC 67

R. v. Thompson, [1990] 2 S.C.R. 111.

R v Vassell, 2016 SCC 76

R v Vu, [2013] 3 SCR 657.

R v Zamini, 1999 OJ No 3780 (CA).

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Appendix 'A'

Date	Event	Delay	Total Delay
ONTARIO COURT OF JUSTICE			
May 28, 2014	Search Warrant executed on 1420-38 Joe Shuster Way. Appellant arrested.	/	0
May 29, 2014	Appellant released on bail.	Neutral	1 day.
June 13, 2014.	First Appearance.	Institutional	15 days.
July 18, 2014.	Set Date #2 – initial disclosure provided.	Institutional	1 month, 18 days.
August 22, 2014.	Set Date #3 – additional disclosure provided.	Institutional	2 months, 23 days.
September 25, 2014.	Set Date #4 – Legal Aid application refused for the first time. Hard drive disclosure available, but not provided to a self-represented litigant.		4 months.
October 27, 2014.	Judicial Pre-Trial #1 (self-represented)		5 months.
November 26, 2014	Judicial Pre-Trial #2 (self-represented) Preliminary Hearing dates set.		6 months.

March 24, 2015.	Judicial Pre-Trial #3 (self-represented)		9 months, 25 days.
May 4, 2015.	Set Date #5 (before Justice Downes, counsel appeared)		11 months, 1 week.
August 22, 2015.	Set Date #6 (counsel appearing)		15 months.
September 15, 2015.	Judicial Pre-Trial #4 (Saccoccia and Batler only)		15 moths, 2.5 weeks.
September 22, 2015.	Set Date #7 (counsel appearing)		16 months.
September 24, 2015.	Judicial Pre-Trial #5 (Saccoccia and Batler only)		16 months.
October 19, 2015.	Set Date #8 (New information with Saccoccia and Batler alone sworn)		16 months, 3 weeks.
October 21, 2015.	Set date #9 (Judge and Jury election made by counsel)		16 months, 3 weeks.
November 17 and 18, 2015.	Preliminary Hearing begins.		17 months, 3 weeks.
November 24, 2015.	Preliminary Hearing concluded (committal conceded by counsel)		18 months.
December 3, 2015.	Committed to stand trial (Batler discharged)		18 months, 1 week.
SUPERIOR COURT OF JUSTICE			

January 20, 2016.	Assignment Court #1 (re-joined to global Project Battery group)		20 months.
February 9, 2016.	Judicial Pre-Trial #1		20 months, 2 weeks.
May 9, 2016.	Global Project Battery pre-trial Motions begin.		23 months, 2 weeks.
June 27, 2016.	Judgment on one half of Project Battery pre-trial motions rendered.		25 months.
June 28, 2016.	Assignment Court #2. (Target trial dates set)		25 months.
July 28, 2016.	Assignment Court #3. (trial readiness date set)		26 months.
December 3, 2016.	Judgment on second half of Project Battery pre-trial motions rendered.		30 months.
January 11, 2017.	Judicial Pre-Trial #2.		31 months, 2 weeks.
January 27, 2017.	Judicial Pre-Trial #3.		32 months.
February 8, 2017.	Judicial Pre-Trial #4 (trial reduced from 8 weeks to 2, Appellant to be tried separately and alone)		32 months, 2 weeks.
April 3, 2017.	Assignment Court #4		34 months, 1 week.
May 1, 2017.	Trial day #1		35 months.
May 12, 2017.	Anticipated trial end		35 months, 2 weeks.

	date.		
POST-11(B) HEARING DATES			
May 8, 2017.	Final trial day. (Finding of guilt made)		35 months, 2 weeks.
June 27, 2017.	Sentence hearing (adjourned because of the Appellant's illness)	Exceptional circumstance.	37 months.
September 18, 2017.	Sentence hearing.		39 months, 3 weeks.