

“Client acquitted in connection with MJ grow operation after Judge agreed warrant should never have been issued” [COMMENTS BY RICHARD NEARY]

File No: 28852-1

Registry: Duncan

In the Provincial Court of British Columbia

REGINA

v.

MICHAEL DAVID B _____

REASONS FOR JUDGMENT

OF

THE HONOURABLE JUDGE SMITH

COPY

Crown Counsel:

M. Coleman

Defence Counsel:

R. Neary

Place of Hearing:

Duncan, B.C.

Date of Judgment:

March 8, 2007

[1] THE COURT: I have indicated why I found the warrant to be invalid, and for the benefit of Constable DeFrane who is now present, because there was no reference to a belief that the theft diversion was taking place within the building or outbuildings. The material simply indicated that a diversion was taking place, and you gave examples of it occurring and all the examples were to the exterior of the building. The information did not go on in any way to indicate why you believed that the theft was occurring within the interior of the residence.

[2] The execution of a warrant and the entry into a person's residence is an extreme power that the State can obtain in certain circumstances. It is fundamental, in my opinion, that to obtain such a warrant there must be evidence to indicate the grounds why the officer believed the offence was occurring within the residence or the outbuildings. That is so fundamental to the authorization sought. It is something that police officers must understand, they must be aware of.

[3] Although I do not fault Constable DeFrane in any way, I am satisfied that there was a clear error committed in these particular circumstances. The information to obtain was grossly deficient. The authorization should not have been authorized. And I go further to say that the police must know the fact that they have to produce and place before the authorizing justice or judge information that allows there to be a determination as to whether or not their grounds do or do not exist with respect to the alleged offence occurring within the location sought to be searched. That did not occur in this particular case.

[4] I infer that in these circumstances that that can be properly characterized as bad faith. I cannot in any way countenance the invasion of a citizen's privacy within that individual's residence. There is a very, very large expectation of privacy that must be respected at all times subject to a member of the judiciary granting a proper authorization based upon proper grounds.

[5] Even though the Crown has indicated the nature and the extent of the grow operation demonstrated by the photographs and the not insignificant value of the marihuana, that in no way allows me to conclude that the admission of the evidence would do nothing but bring the administration of justice into disrepute because of the sanctity, importance, and significance of an individual's residence, and that should not be entered without proper judicial authorization. That has not occurred here because of the total deficiency in the application and information placed before the authorizing justice.

[6] The evidence will not go before me.

[7] That is the extent of the case?

[8] MR. COLEMAN: That's correct, Your Honour.

[9] THE COURT: And you are calling no evidence?

[10] MR. NEARY: No, Your Honour.

[11] THE COURT: The case is hereby dismissed.

(REASONS CONCLUDED).