

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.



**ORAL RULING ON VOIR DIRE #2
(RE SECTION 24(2) ANALYSIS AND DETERMINATION)
OF
THE HONOURABLE JUDGE M. MUNRO**

Crown Counsel:

T. Corsi

Counsel for the Accused:

R.L. Neary (by teleconference)

Place of Hearing:

Victoria, B.C.

Date of Ruling:

August 28, 2026

VERITEXT LEGAL SOLUTIONS

700 - 925 W. Georgia St. Vancouver, B.C. V6C 3L2
(604)684-4347
www.veritext.ca

[1] THE COURT: Following a voir dire into the sufficiency of the Information to Obtain a search warrant for the accused's residence, I found as follows [as read in]:

In the case of this Information to Obtain, the failure to adequately connect the applicant to the residence at [REDACTED], the misleading and highly prejudicial information contained in an effort to characterize the applicant as a known drug trafficker, the conclusory, unsourced, and sparse information of the confidential informants, the admitted objective of the affiant in securing a search warrant over the obligation of full, fair, and frank disclosure, and the failure in that regard of alerting the authorizing justice that the bulk of the surveillance team information was not signed off on as to accuracy, all leave the document in such a deficient and misleading state that an authorizing justice could not have authorized this warrant. Individually, any one of these issues may have caused sufficient concern to set aside the warrant. Cumulatively, they are overwhelming. According, I find a violation of s. 8. By agreement, as I understand the parties, the tracking warrant must also fail. A date will need to be set to argue s. 24(2).

[2] I have heard submissions in that regard. These are my reasons on the s 24(2) issue.

[3] The *R v Grant*, 2009 SCC 32, analysis requires a balancing of three lines of inquiry:

- (1) the seriousness of the *Charter*-infringing state conduct;
- (2) the impact of the *Charter*-protected interests of the accused; and
- (3) society's interests in an adjudication of the case on its merits.

[4] In considering the seriousness of the *Charter*-infringing state conduct, I rely upon the reasoning of the Supreme Court of Canada in *Morelli*, the citation is 2010 SCC 8, at paragraph 102, where the court said:

Police officers seeking search warrants are bound to act with diligence and integrity, taking care to discharge the special duties of candour and full disclosure that attach in *ex parte* proceedings. In discharging those duties responsibly, they must guard against making statements that are likely to mislead the justice of the peace. They must refrain from concealing or omitting relevant facts. And they must take care not to otherwise exaggerate the information upon which they rely to establish reasonable and probable grounds for issuance of a search warrant.

[5] In the case of *R v Booth*, citation, 2019 ONCA 970, the Ontario Court of Appeal said this at paragraphs 54 and 55:

[54] ... it is imperative that issuing judges or justices have an accurate understanding of the material, known facts available to the affiant officer. If the ITO contains erroneous, incomplete, or dishonest information relating to known information, an issuing judge or justice could be misled, and provide an authorization that should not have been provided. To ensure accuracy, anyone seeking an *ex parte* authorization, such as a search warrant, is required to make full and frank disclosure of material facts ...

They cite *R v Araujo*, 2000 SCC 65, [2000] 2 SCR 992, at paragraph 46, with approval:

This is because an *ex parte* warrant application is not adversarial. As a corollary of the privilege of being the only party permitted to present evidence in an *ex parte* application, a search warrant affiant bears the burden of presenting the facts accurately and fairly, from the perspectives of both sides.

They carry on in part at paragraph 55:

Therefore, a search warrant ITO should never try to trick its readers, or offer misleadingly incomplete recitations of known facts, and the affiant officer must not “pick and choose” among the relevant facts in order to achieve a desired outcome ...

Again, citing the Supreme Court of Canada decisions of *Araujo*, 2000 SCC 65, and *Morelli*, 2010 SCC 8, with approval, citations included.

[6] Finally, in the case of *Herta*, 2018 ONCA 927 [sic, *Booth*, 2019 ONCA 970], at paragraph 124, the Ontario Court of Appeal says as follows:

In this case, the affiant officer fell far short of that standard. Although I accept the trial judge's assessment that the affiant officer did not intentionally violate the *Charter*, he was clearly negligent. He testified that he was aware of his obligation to make full and frank disclosure, but he was patently inattentive to that obligation. It is not unfair to characterize the ITO as an exercise in advocacy, rather than disclosure.

[7] The same can be said for the Information to Obtain in this case. Each of the above referenced authorities were considered and relied upon by our Court of Appeal in the recent decision of *R v Khamvongsa*, [2025] BCJ No. 171, which stated as follows at paragraph 48:

Finally, although a finding of an intent to mislead is likely to result in *Charter*-infringing conduct landing at the top end of the culpability ladder, that is not the only route to getting there. The fact that an ITO is factually misleading (irrespective of intent), and/or suffers from other drafting issues that either individually or in their cumulative effect realistically subvert the warrant process, can also move the state conduct to the more serious end of the spectrum. It depends on the nature and number of the errors, in the context of the particular circumstances of the case. Those circumstances necessarily include the nature of the privacy interest at stake and the significance of the state intrusion enabled by the warrant: *R. v. Voong*, 2013 BCCA 527 at para. 97.

[8] Given the reasons in this case resulting in the s 8 violation, I am satisfied that the nature and cumulative effect of those defects result in state conduct that is

at the more serious end of the spectrum. This first line of inquiry, accordingly, strongly favours exclusion.

[9] The second line of inquiry is the impact on the *Charter*-protected interests of the accused. This warrant, obtained as a result of violations of s 8 of the *Charter*, secured entry into the accused's residence wherein he had a significant privacy interest. Both Crown and defence agree this second line of inquiry, accordingly, strongly favours exclusion

[10] The third line of inquiry is society's interest in an adjudication of the case on its merits. This line of inquiry will almost always favour admission and this case is no exception to that proposition. The result of the search of the accused's residence in this case resulted in the seizure of 20 grams of crack cocaine, 1.5 kilograms of methamphetamines, and 1.2 kilograms of fentanyl, all reflected in the information before the Court. Numerous firearms were also located as set out in the information before the Court. If such evidence were to be excluded, it would effectively gut the Crown case and the prosecution could not proceed further. Both counsel agree this factor favours inclusion.

[11] At paragraph 61 of the *Khamvongsa* decision, the Court quoted its own authority in *R v Pawar*, 2020 BCCA 251, as follows:

... a “... serious breach that has a serious impact on the rights of a *Charter*-claimant” ... generally “pulls the analysis” towards exclusion: at para. 44.

[12] Finally, in *R v Lafrance*, [2022] SCJ No. 32, at paragraph 90, the Supreme Court of Canada had this to say in relation to balancing the three lines of inquiry, midway down the paragraph:

While the first two lines of inquiry typically work in tandem, it is not necessary that both of them support exclusion in order for a court to determine that admission would bring the administration of justice into disrepute ...

Citing their own previous decision in *Le* at paragraph 141:

As the Court said in *Le*, “[i]t is the sum, and not the average, of those first two lines of inquiry that determines the pull towards exclusion” ... In other words, it is the cumulative weight of the first two lines of inquiry that trial judges must consider and balance against the third line of inquiry when assessing whether evidence should be excluded. That is why the third line — which typically pulls towards a finding that admission would not bring the administration of justice into disrepute — will seldom tip the scale in favour of admissibility when the two first lines, taken together, make a strong case for exclusion (*Le*, at para. 142; *R. v. Paterson*, 2017 SCC 15, [2017] 1 S.C.R. 202, at para. 56).

[13] In my view, the first two lines of inquiry make a strong case for exclusion and the third line of inquiry in this case does not tip the scale in favour of admissibility. I would order the exclusion of the evidence seized from the residence of the accused in this case on this basis alone. The breach found earlier in this proceeding in relation to the accused's cellphone, in and of itself a relatively modest transgression, only strengthens this resolve.

[14] Mr. Corsi, the evidence is excluded.

[15] CNSL T. CORSI: Yes, thank you, Your Honour. I believe we are currently in Voir Dire #2?

[16] THE COURT: We are.

[17] CNSL T. CORSI: All right, thank you. So, with that decision, I gather we can end Voir Dire #2 --

[18] THE COURT: We can.

[19] CNSL T. CORSI: -- and move into trial proper?

[20] THE COURT: Yes.

[21] CNSL T. CORSI: Crown calls no evidence on the trial proper.

[22] THE COURT: All right.

[23] [REDACTED], all charges against you are hereby dismissed.

(ORAL RULING ON VOIR DIRE #2 CONCLUDED)