

File Nos. [REDACTED]
Western Communities Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.

[REDACTED]

**ORAL RULING ON VOIR DIRE #1
(RE SECTION 8 AND VALIDITY OF SEARCH WARRANT)
OF
THE HONOURABLE JUDGE M. MUNRO**

Crown Counsel:

T. Corsi

Counsel for the Accused:

R.L. Neary

Place of Hearing:

Victoria, B.C.

Date of Ruling:

June 11, 2026

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[1] THE COURT: [REDACTED] stands charged in Information [REDACTED] with various drug offences for the purpose of trafficking, in addition to various weapons offences. In the course of these proceedings, I granted an application for leave to cross-examine the affiant to the Information to Obtain a Search Warrant for the residence located at [REDACTED], British Columbia. That cross-examination was restricted to surveillance paragraphs within the Information to Obtain. That cross-examination led to further disclosure applications as the affiant's process in constructing the document became more evident. I have now heard submissions on the s 8 issue as to the validity of the search warrant for that address which include both facial and subfacial attacks on that Information to Obtain. These are my reasons in response to those submissions.

[2] The legal analysis generally engaged is set out neatly by Justice Ker in a case called *R v Emery*, [2019] BCJ No. 1881. At paragraph 23, the justice says as follows:

[23] The issue before me is twofold:

- a) Should certain paragraphs of the ITO be excised because they are prejudicial and misleading due to the fact that they refer to an investigation in June 2018 where charges still had not been approved by the Crown (at the time the ITO in issue on this case was sworn); and,
- b) Should certain paragraphs of the ITO be excised because they are conclusory and/or boilerplate assertions with no underlying facts to support the assertions they contain?

- [24] Once any excisions are made, the issue becomes whether the issuing justice could have granted the search warrant on the remaining facts set out in the [Information to Obtain]. The issue is not whether I would have issued the warrant, but whether the issuing justice could have done so: *R. v. Araujo*, 2000 SCC 65 at para. 51, citing *R. v. Garofoli*, 1990 CanLII 52 (SCC), [1990] 2 S.C.R. 1421 at 1452; *R. v. Morelli*, 2010 SCC 8 at para. 40.
- [25] In applying this test, I am obliged to consider the totality of the circumstances set out in the ITO with the various excisions removed from consideration. The ITO must contain facts that could have satisfied the issuing justice that the statutory preconditions for granting a warrant were met. The two statutory preconditions of most concern here are the requirements to show belief on reasonable grounds that, firstly, an offence or offences have been committed, and secondly, that evidence of those offences would be located at the place to be searched, namely, the residence at Unit #2, 9145 Charles Street: *Morelli* at para. 39.
- [26] The reasonable grounds standard does not require proof of a *prima facie* case, much less does it require proof beyond a reasonable doubt. Rather, the reasonable grounds standard contemplates a credibly-based probability or reasonable probability. It has been described as the point at which suspicion gives way to credibly-based probability: *R. v. Vu*, 2011 BCCA 536 at para. 39, *aff'd* *R. v. Vu*, 2013 SCC 60 at paras. 9–18; *R. v. Liu*, 2014 BCCA 166 at para. 37.
- [27] The requirement to consider the totality of the circumstances means that I cannot simply examine each aspect of the grounds in isolation. Rather, I must consider whether, in light of all the grounds taken together and reviewed cumulatively, the issuing justice could have granted the warrant: *R. v. Whitaker*, 2008 BCCA 174 at para. 41.
- [28] As a reviewing judge, I must consider a number of principles in conducting the review. Among these is the principle that an officer who swears an affidavit or an ITO in support of an *ex parte* application has a duty of full, frank, and fair disclosure. The officer must set out not only the facts which support the order sought, but also the facts that tend to weigh against the order sought. The affidavit should set out the facts in a manner that is fair and does not trick or mislead the reader: *R. v. Araujo* at paras. 46–47. The affiant has no duty to set out every fact in the investigation—rather, the affiant has a duty to set out all

material facts, that is, facts that would be material to the granting or refusal of the application. Thus, the affidavit or ITO should be clear and concise: *R. v. Sunner*, 2017 BCSC 2445 citing *R. v. Araujo* at para. 46.

[3] I also refer briefly to the decision of our Court of Appeal in *R v Ling*, 2009 BCJ No. 267, at paragraph 38:

An obligation to make full and frank disclosure of all material facts, whether pro or con the issuance of the warrant, best guards against the evil of misleading the authorizing justice by omission.

[4] Through a facial and subfacial review of the Information to Obtain in this case, a number of issues arise as to whether a warrant could have issued with respect to a search of [REDACTED], affirmatively said to be the residence of the accused, [REDACTED], in the Information to Obtain. Cross-examination of the affiant confirmed an overall strategic approach to the construction of the Information to Obtain which offends the principles set out in *Araujo* and *Morelli* as to the requirement of full, fair, and frank disclosure.

[5] Cross-examination of the affiant confirmed a conceded effort on the part of the affiant in preparing the document to present the information contained therein in a manner that would convince the authorizing justice that granting the warrant was the appropriate outcome. The affiant candidly agreed that he engaged in a process of editing with the guidance of an experienced RCM Police affiant in such matters with a view to improving the chances of obtaining the warrant. Throughout this process, it is clear on the evidence of this affiant that the duty of full, fair, and frank disclosure as contemplated by the authorities has been impinged upon.

[6] Some information, he testified, for example, was edited out to avoid potential defence disclosure pitfalls. It is equally clear on the evidence of this affiant that precisely what information was edited out in favour of what took its place or what remained, although assisted somewhat by the amplification process, would be impossible to demonstrate at this stage. Thus, it would be impossible to determine the potential impact or otherwise of such an editing process at the time of the initial authorization or now.

[7] I must say in describing the process, notwithstanding reliability issues which presented themselves throughout the testimony of the affiant given the passage of time, I found him generally to be a candid witness. That candour, however, does not redeem the failure to live up to the standard of full, fair, and frank disclosure.

[8] It is also clear from the evidence of the affiant that the authorizing justice was not informed that the surveillance reports relied upon, for the most part, were not signed off on by the surveillance team as to accuracy. A reviewing justice, knowing this, might have stopped in their tracks and said, "I cannot rely on this information without that confirmation," denied the application with the proviso that once the surveillance team members had reviewed and signed off on the surveillance reports as to accuracy, if that in fact were the case, then the application for the warrant could be resubmitted for consideration with a mere addendum confirming same. I also bear in mind that March 12, 2024, came on fast as the day the warrant application had to be submitted. The haste of the situation would not have lent itself to such niceties as confirming that much of what the authorizing justice was

being asked to rely upon by way of surveillance information for the issuance of the warrant was of unconfirmed reliability.

[9] The concession by Crown to remove paragraphs 15(e), (f), and (g) of the ITO also significantly compromises the document as it was presented to the authorizing justice. As a natural consequence of these excisions and the amplification of the Information to Obtain overall, the reference in paragraph 5 to the accused as a known drug trafficker and in paragraph 14(c) as someone with an extensive drug history across Southern Vancouver Island must, in my view, also be excised. At no time, despite these repeated references to the accused as being involved in the drug world, is it made clear in the Information to Obtain that he has no criminal record. Quite the contrary, through the now excised paragraphs, a picture was painted of someone deeply entrenched in the drug trade. The prejudice of the concededly excised paragraphs and those, in my view, which must follow on the authorizing justice cannot be undone.

[10] Given the assertion throughout the Information to Obtain that [REDACTED] [REDACTED], British Columbia, is the accused's residence, a further examination of such an important matter is warranted. At paragraph 14(c), a vehicle associated to the accused is parked in the driveway of [REDACTED] [REDACTED], British Columbia, a residence associated with someone believed to be the accused's girlfriend. The date of that information is November 9th of 2023. On November 28th of 2023, in paragraph 14(e) of the ITO, a different vehicle associated to this accused is again located at the [REDACTED] address.

[11] At paragraph 16, the West Shore RCM Police investigate a report of shots fired at the accused's residence with a reference to it being in [REDACTED]. Without further explanation it makes little sense that West Shore would investigate. There was no information that it was a drug-related circumstance, the specific address was not provided. In paragraph 20, there is reference on March 12 of 2024 of a home invasion, again, at the [REDACTED] address in [REDACTED]. Apparently on that occasion, information is provided that this accused was both present and the apparent victim of a stabbing.

[12] At paragraph 25 and 27, there is confidential informant information provided: in 25, that this accused sells drugs and a phone number, no reference to any residence of any sort, no reference to the currency of that information or any other information which might allow one to assess the reliability of such information; similarly, paragraph 27, Confidential Informant C apparently advising the accused lives in Sooke and sells drugs. Similar commentary can be made with respect to that confidential informant.

[13] In paragraph 35, surveillance information apparently sees a vehicle associated to this accused parked in front of the [REDACTED] address in [REDACTED]. Observations indicate this accused gets out of the driver's seat, backpack and cardboard box in hand from the rear seat, and enters the front door of the Valley View address. There is no indication of how he enters or how long he stays or what becomes of the items he carried in or any other detail about either of those items. This information, of course, suffers the same reliability problem with the surveillance team not signing off on the surveillance report as to accuracy. It

provides little information, in any event, as to the accused's connection to the Valley View address.

[14] An observation in paragraph 36(f) from February 15 of 2024, associates the accused again with the [REDACTED] address in [REDACTED]. Paragraph 38, also initially associates this accused with the [REDACTED] address in [REDACTED] with him leaving there in a black Yukon vehicle. Some type of exchange then takes place when he returns and, at some point later, that black Yukon vehicle is in the driveway of [REDACTED]. This accused apparently, and an unknown person, carry a duffle bag into the front door. There is no indication, again, of how they entered the residence.

[15] In paragraph 45 the surveillance report does not suffer the same criticism of not being verified as to accuracy by surveillance team members. This time the surveillance members are out of Victoria as opposed to Duncan/North Cowichan. Apparently at 4:42 p.m., on March 7 of 2024, this accused is seen departing [REDACTED] [REDACTED] with a dog in a grey 4Runner. The information does not actually convey if he was ever inside the residence and, if so, how he exited or perhaps, most importantly, if he locked the door behind him.

[16] The upshot of all of this information is that this accused is seen in or around the [REDACTED] residence more so than any other, if the surveillance reports were to be relied upon and, while the various observations may confirm some connection with [REDACTED], there is nothing to suggest occupancy and

perhaps, more importantly, nothing to suggest any degree of control over the residence.

[17] In the result, I am not satisfied on a facial review that there is a sufficient connection demonstrated to the [REDACTED] residence that establishes a credibly-based probability that the items sought as a product of this accused's alleged illicit activities will be located therein. That finding is significantly enhanced by the subfacial review, in particular, the demonstrated and conceded effort of the affiant to convince the authorizing justice to issue the warrant and the failure to advise the authorizing justice that the bulk of the surveillance reports were not signed off on as to accuracy by the surveillance team.

[18] Throughout the course of this proceeding and during argument on this application, the defence made a sustained facial attack on the issuance of the warrant on the basis that the issuing justice spent just under half an hour reviewing the approximately 80-page Information to Obtain. In the face of the presumption that a judicial officer is properly discharging their duty coupled with the fact that a subfacial review clearly revealed that the document was engineered to convince its reader to issue the warrant, I would give little effect to this argument.

[19] Whether the reviewing justice chooses a course of excision or, upon amplification of impugned information, ascribes little or no weight to it is of little consequence. 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 by the members 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).

[20] That is my ruling.

(ORAL RULING ON VOIR DIRE #1 CONCLUDED)