

CANADA / JUDGMENT

R. v. Alexander

2025 BCSC 1908

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1908 R. v. Alexander

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Alexander,

2025 BCSC 1908

Date: 20250821

Docket: 90508-2

Registry: Nanaimo

Rex

v.

Peter Anthony Alexander

Before: The Honourable Justice Layton

Oral Reasons for Judgment on s. 8 Charter Application

Counsel for the Crown:

C.J. Gibson

Counsel for the Accused:

T.L. Spettigue

Place and Date of Hearing:

Nanaimo, B.C.

August 18-19, 2025

Place and Date of Judgment:

Nanaimo, B.C.

August 21, 2025

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Introduction

- [1] Mr. Alexander is charged with four counts of possessing a controlled substance for the purpose of trafficking arising out of a warranted search of a residence at 52 Athletic Street, Nanaimo, British Columbia on August 2, 2022, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
- [2] Mr. Alexander has applied under ss. 8 and 24(2) of the Charter to exclude evidence obtained by police as a result of this search. His Charter application rests predominantly on a sub-facial challenge to the warrant's validity.
- [3] To facilitate that challenge, in an earlier ruling I granted Mr. Alexander's unopposed application for leave to cross-examine Cst. Mike Fudge, the officer who swore the information to obtain ("ITO") the search warrant.
- [4] Having heard the evidence of Cst. Fudge, in these reasons I will address whether, based on the record as amplified, the issuing justice could have granted the warrant to search 52 Athletic Street. If not, that search will have breached Mr. Alexander's s. 8 Charter right to be secure from unreasonable search or seizure.
- [5] I will begin by reviewing the contents of the ITO, after which I will canvass the applicable legal principles. I will then consider the record as amplified by Cst. Fudge's testimony, and in particular the ways in which Mr. Alexander says that, based on this record, the search warrant could not have issued.

- [6] The Crown does not oppose me considering the areas of amplification relied on by Mr. Alexander, but rather argues that the record as expanded still provides a proper basis upon which the warrant could have issued.

Contents of the ITO

- [7] Cst. Fudge swore the ITO on August 2, 2022, in support of an application to obtain a warrant under s. 487(1) of the Criminal Code to search 52 Athletic Street for items affording evidence that, between July 31 and August 1, 2022, Mr. Alexander committed the Criminal Code offences of:
- a) pointing a firearm at Todd Grobowsky (s. 87);
 - b) forcibly confining Mr. Grobowsky (s. 279(2)); and
 - c) aggravated assault against Mr. Grobowsky (s. 268).
- [8] The items of evidence to be searched for in the residence were: DNA such as blood and other bodily substances; firearms and ammunition; binding materials such as rope, duct tape and zap straps; surveillance video storage devices with any associated data; and documents related to occupancy.
- [9] In the remainder of this section of my reasons, I will provide an overview of the investigation as described in Cst. Fudge's ITO.
- [10] On August 1, 2022, the Nanaimo RCMP dispatch received a call about an injured male who was in "bad shape" and had stumbled onto a residential property in the vicinity of 26 Strickland Street.
- [11] Cst. Weselowski attended at 26 Strickland Street to find Todd Grobowsky, who appeared to be in a great deal of pain. Mr. Grobowsky's eyes were swollen shut and he had significant bruising around both cheeks between his mouth and chin. He also had linear burn marks around his neck, and his head was shaved in a haphazard manner.
- [12] Having reviewed photos of these injuries, Cst. Fudge stated that, despite previously knowing Mr. Grobowsky, the facial swelling and bruising prevented him from identifying Mr. Grobowsky based only on the photos.
- [13] Cst. Wesleowski took a brief audio statement from Mr. Grobowsky at the scene, in which Mr. Grobowsky stated that:
- a) he had been walking along Second Street in Nanaimo when a black SUV pulled up beside him, and four people forced him into the vehicle;
 - b) one of the people, who he previously knew as "Pete", pointed a gun at his head;
 - c) he did not know Pete's last name, and had never seen the other three people before;
 - d) he was taken to a house "where they're living", where he was beaten up for "24 hours";

- e) he could only identify Pete and Pete's girlfriend as the people who had assaulted him;
- f) he described the location of the house where he was held and beaten as follows:
 - i. "you go up that five-way stop past the store";
 - ii. "take a right to the next street";
 - iii. "you go over the train tracks take your first left and then your first right and it's the house on the right"

- [14] Cst. Fudge stated that, based on his experience in and knowledge about Nanaimo geography, the directions and descriptions provided by Mr. Grobowsky identified the residence in question as 52 Athletic Street. He added that his understanding was strengthened when Cst. Weselowski suggested to Mr. Grobowsky, "is that Athletic?"
- [15] Cst. Fudge further stated that, based on his police experience in Nanaimo, he was aware that Peter Alexander lived at 52 Athletic Street, and that a search warrant had been executed on June 14, 2022 at this same residence associated with another forcible confinement investigation. Cst. Fudge was present when this other search warrant was executed, and saw Mr. Alexander being arrested inside the residence. Despite already having this personal knowledge, on August 2, 2022 Cst. Fudge queried Mr. Alexander on PRIME, which confirmed that he resided at 52 Athletic Street.
- [16] Cst. Fudge indicated that he believed that "Pete" was Mr. Alexander and that Mr. Grobowsky was forcibly confined and assaulted inside 52 Athletic Street, based on Mr. Grobowsky: (a) stating that the man with the gun was named "Pete" and that he was taken to the residence "where they are living"; and (b) providing directions to "Pete's residence" that led to Mr. Alexander's residence at 52 Athletic Street, the site of a forcible confinement investigation about six weeks before.
- [17] In the ITO, Cst. Fudge also said that, based on factors I need not repeat because they are irrelevant to the issues on this application, he believed Mr. Grobowsky's statement was taken while waiting for emergency health services to attend at the scene, and that upon their arrival the statement concluded abruptly.
- [18] The ITO indicated that, after Mr. Grobowsky was taken to the hospital, Cst. Weselowski requested that a dayshift member attend there to obtain a more detailed statement about the assault. Cst. Gamble attended at the hospital on August 2, 2022 for this purpose, but was told that Mr. Grobowsky had left against medical advice at 7:15 a.m. Patrols were made around Nanaimo in an attempt to locate Mr. Grobowsky, but with no success.
- [19] On August 2, 2022 at 1:23 p.m., Cst. Devoe drove by 52 Athletic Street and noted a security camera fastened to a pole outside the residence, after which she phoned Cst. Fudge to advise of this information.

- [20] Based on the information I have just set out, the ITO expressed Cst. Fudge's belief that the items I have already identified would be located inside 52 Athletic Street and would afford evidence regarding the named offences.

Legal Principles

- [21] Section 487(1)(b) of the Criminal Code permits a justice to issue a warrant authorizing a peace officer to search a place for a thing, and to seize it, where the justice is satisfied that there are reasonable grounds to believe the thing is in that place and will afford evidence with respect to the commission of an offence.
- [22] The reasonable grounds standard requires more than mere suspicion, but does not require proof on a balance of probabilities. A level of "possibility" can thus be sufficient, and the issuing justice need not be satisfied that it is more likely than not that an item affording evidence regarding the offence will be found at the place to be searched: *R. v. Beaver*, 2022 SCC 54 at para. 72(6); *R. v. Glendinning*, 2019 BCCA 365 at paras. 2-7, leave to appeal to SCC ref'd, 2020 CanLII 22068 (S.C.C.); *R. v. Henareh*, 2017 BCCA 7 at para. 39.
- [23] In deciding whether reasonable grounds exist, an issuing justice must consider all of the circumstances on a practical, non-technical and common-sense basis: *Glendinning* at para. 31; *Henareh* at paras. 39-40; *R. v. Donovan*, 2025 BCCA 30 at para. 93; *R. v. Sadikov*, 2014 ONCA 72 at paras. 82, 93.
- [24] The justice may also draw reasonable inferences from the evidence in the ITO - it need not state the obvious, and the inference need not be the only or most compelling one available: *R. v. Vu*, 2013 SCC 60 at para. 16; *R. v. Reilly*, 2020 BCCA 369 at paras. 46-50, aff'd 2021 SCC 38; *Sadikov* at paras. 81-82, 88; *R. v. Hafizi*, 2016 ONCA 933 at paras. 56, 60; *R. v. Ali*, 2023 SKCA 127 at para. 42, consent motion to reverse granted on other grounds, SCC No. 41055.
- [25] Where a search is challenged under s. 8 of the Charter on the basis that the authorizing warrant lacked reasonable grounds, the trial judge must start with the premise that warrants are presumed to be valid. Accordingly, the accused bears the onus of proving a search warrant was not properly issued. See *Donovan* at para. 82; *R. v. Bridgen*, 2022 BCCA 429 at para. 3; *Sadikov* at para. 83; *R. v. Wilson*, 2011 BCCA 252 at para. 63.
- [26] The review conducted on a s. 8 Charter challenge is not a rehearing of the search warrant application. The trial judge does not determine whether they would have issued the warrant, but whether the warrant could have issued. The judge must thus ask whether the issuing justice had before them at least some evidence, which might reasonably be believed, on the basis of which the search warrant could have issued. If so, the warrant is valid and s. 8 has not been breached. In other words, the reviewing judge does not re-weigh the evidence before the authorizing justice and substitute their own views, including their own preferences between competing reasonable inferences. See *Vu* at para. 16; *R. v. Loewen*, 2016 BCCA 351 at paras. 34-37; *Bridgen* at para. 3; *R. v. Slemko*, 2020 BCCA 207 at para. 53, quoting from *Sadikov* at paras. 84-89.

- [27] A challenge to an ITO can be facial or sub-facial, the definition and tests for both of which were recently described in Donovan:
- [89] A facial challenge attacks the sufficiency of the ITO based only on the information it contains. The reviewing judge examines the ITO to determine whether the authorizing justice could have issued the warrant: *R. v. Vu*, 2013 SCC 60 at para. 16. In other words, for a facial challenge to succeed, the ITO as written must disclose no basis on which the authorizing judge could have found reasonable grounds to believe that an offence was committed or that evidence of the offence would be found at the place to be searched.
- [90] A sub-facial challenge goes behind the ITO to attack the reliability of its content, based on the amplified record before the reviewing judge. The task of the reviewing judge is to determine whether, based on the record before the authorizing justice as amplified on review, "there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued": *Araujo* at para. 54.
- [28] Sub-facial challenges involve testing the accuracy of the ITO against the affiant's reasonable belief at that time. Where an applicant establishes that the affiant knew or should have known specific evidence was false, inaccurate, or misleading, that evidence should be excised from the ITO when determining whether the warrant was lawfully issued. On the other hand, if additional evidence existed that the affiant knew or should have known and included in the ITO to make full, fair and frank disclosure, that evidence can be added when determining whether the warrant was lawfully issued. See *Donovan* at para. 94; *R. v. Dill*, 2025 BCSC 1153 at para. 61.
- [29] The Crown may be able to use amplification to correct an error in the ITO, but its use of amplification is restricted to correcting minor or technical errors made in good faith: *Donovan* at para. 94; *R. v. Van Diep*, 2015 BCCA 264 at paras. 31-32.
- [30] Affiants are obligated to provide full, fair and frank disclosure of material facts: *Donovan* at para. 85; *Dill* at para. 62; *R. v. Araujo*, 2000 SCC 65 at para. 46. A material fact is one that refers to a matter bearing on the merits or substance of the application, not every possible relevant fact: *Dill* at para. 62, citing *R. v. Nguyen*, 2011 ONCA 465 at para. 51; *R. v. Montgomery*, 2016 BCCA 379 at para. 98.
- [31] An affiant cannot simply recite conclusory statements that are material to the application without setting out any factual underpinning allowing the issuing justice to evaluate the factual basis for the conclusion. The question is not, however, whether such purported defects are present in the ITO, but whether there is enough else in the ITO to satisfy the required test; i.e., whether there remains a reliable evidentiary basis on which the warrant could have issued. See *Dill* at para. 63; *R. v. Biring*, 2022 BCSC 925 at paras. 58-61; *R. v. Snider*, 2012 BCSC 1906 at paras. 15-16, *aff'd* 2014 BCCA 229; *R. v. Magee*, 2014 BCSC 384 at para. 53.

[32] The police have no general obligation to investigate all possible leads before seeking a search warrant, provided they have reasonable grounds to obtain it. Consequently, the mere fact that further inquiries could have been made will not mean that a search warrant cannot issue. Generally speaking, the police are to be judged on the grounds in the ITO, not on what steps they could have taken to acquire additional grounds. See Glendinning at para. 24; R. v. Law, 2002 BCCA 594 at para. 11; R. v. Le, 2021 BCCA 52 at paras. 47-53, leave refused, 2021 CanLII 61397.

Analysis

- [33] The defence argues that the record as amplified by Cst. Fudge's evidence does not provide a basis upon which a search warrant for 52 Athletic Street could have been issued.
- [34] The Crown does not contest the defence assertion that Cst. Fudge ought to have included additional information about several matters in the ITO, but rather submits that the record as amplified continues to provide a basis upon which the search warrant could have issued.
- [35] There is no suggestion by the defence that Cst. Fudge knowingly withheld this additional information, and in any event I conclude that, in including only the information that he did, Cst. Fudge was not trying to mislead the justice. I found him to be a sincere witness and have no concerns regarding his credibility or reliability.
- [36] In addressing the defence arguments based on the amplified record, I will begin by reviewing Cst. Fudge's evidence and what it adds to the information in the ITO. Along the way, I will offer some comments with respect to how the record as amplified potentially impacts the validity of the warrant. Then, in the final section of my analysis, I will apply the test on review to the record as amplified.
- [37] Before beginning this analysis, I note that there were two areas on which Cst. Fudge was cross-examined that the defence did not pursue in its closing submissions on this application. One related to security camera footage from a different house on Athletic Street, while the other pertained to how drug dealers sometimes try to mislead police to harm competitors. Because these areas are no longer relied on by the defence, I will say no more about them.
- [38] I turn now to consider the first of the three areas with respect to which the defence relies on the record as amplified by Cst. Fudge's evidence to argue that the execution of the warrant breached s. 8 of the Charter.

Mr. Grobowsky's Reliability

- [39] The ITO did not say anything about Mr. Grobowsky being involved in the illegal drug trade. However, Cst. Fudge testified that when he swore the ITO he had known that Mr. Grobowsky had been and may well still be a fentanyl trafficker in Nanaimo.

- [40] In cross-examination, Cst. Fudge agreed that a person who traffics fentanyl, which can potentially kill people, flouts the law without concern for the consequences of doing so. He further agreed that, although some drug dealers respect the police and others do not, as a group they are less likely to respect the police than are other members of the public. Cst. Fudge also agreed that drug traffickers are usually very reluctant to cooperate with police regarding their criminal activities.
- [41] In elaborating on these general propositions in the context of this particular case, Cst. Fudge made some additional points.
- [42] First, Cst. Fudge testified that, while drug dealers rarely wish to cooperate with police, he was not suspicious about the reliability of the information received from Mr. Grobowsky, because Mr. Grobowsky spoke to police only because they had attended in response to a 911 call, at which time Mr. Grobowsky was in the "dire situation" of having suffered serious injuries after an apparent assault.
- [43] Cst. Fudge elaborated by stating that, in his experience, a drug dealer who is violently assaulted and suffers serious injuries will often initially speak with police, but then stop cooperating later on, after their safety concerns subside. This is what Cst. Fudge believed had occurred when Mr. Grobowsky checked himself out of the hospital the morning after the incident. He had received no information to suggest that Mr. Grobowsky had recanted.
- [44] Second, Cst. Fudge stated that he had not included in the ITO that Mr. Grobowsky was a drug dealer because, whether rightly or wrongly, he had felt the victim's lifestyle was irrelevant to investigating the crime. Cst. Fudge had no information specific to Mr. Grobowsky that suggested that he disrespected the police or had previously provided police with false information. For example, there was no information to suggest Mr. Grobowsky had criminal convictions for obstructing justice or public mischief. In fact, the voir dire evidence did not suggest that he had a criminal record at all.
- [45] In my view, Cst. Fudge's testimony about Mr. Grobowsky being a fentanyl trafficker, if available to the issuing justice, would have been helpful for the purpose of providing a complete picture as to his possible motivations. But this additional information would have been unlikely to materially undermine Mr. Grobowsky's credibility or reliability in the eyes of the justice with respect to the matters to be considered in deciding whether to issue the search warrant.
- [46] I am further of the view that it would have been reasonably open to the issuing justice to conclude that, given the circumstances in which Mr. Grobowsky gave the statement to Cst. Weselowski, including being in significant pain after suffering serious injuries, he was being forthright in describing what he recalled about when, where and how he received those injuries. Indeed, the defence essentially conceded this point in closing submissions on the voir dire.

- [47] I also find that the issuing justice could have come to this conclusion simply by applying common sense in the context of those same circumstances, without the need to rely on Cst. Fudge's opinion as to why, based on his lengthy experience as a drug investigator, he believed that Mr. Grobowsky was likely telling the truth.

Who Lived Where

- [48] The ITO accurately recounted Mr. Grobowsky's statement that he had previously known only one of the four individuals who abducted him, the man who had held a gun to his head - first name Pete and last name unknown - and that Mr. Grobowsky had also said that he was taken to, "where they are living".
- [49] However, the defence takes issue with a comment, made later in the ITO, where Cst. Fudge states that Mr. Grobowsky provided "directions on how to get to Pete's residence".
- [50] In his testimony, Cst. Fudge explained that, because Mr. Grobowsky had previously known "Pete", but had never before seen the other three abductors, he had inferred that this reference to "where they are living" pertained to "Pete" and his girlfriend, who Mr. Grobowsky had said joined in the assault.
- [51] In my view, the inference drawn by Cst. Fudge was reasonable and made in good faith, a conclusion with which the defence agreed in closing submissions. I am also of the opinion that it is very unlikely that the reference to "Pete's residence" in the ITO would have led the issuing justice astray.
- [52] Nonetheless, the Crown does not oppose the defence request to excise part of the ITO to reflect that Mr. Grobowsky never expressly stated that "Pete" lived at the residence. The impugned portion of the ITO, found at p. 7, should therefore be edited as follows, with the single addition underlined and the single deletion crossed out (I have not corrected what appear to be punctuation and grammatical errors):

Based on Grobowsky stating that he was taken to the residence "where they are living", having a gun pointed at him by 'Pete', providing directions on how to get to that Pete's residence, while describing 52 Athletic Street Peter ALEXANDER residing at 52 Athletic Street and the previous forcible confinement investigation. I believe that 'Pete' referred to by Grobowsky is Peter ALEXANDER and that Grobowsky was forcibly confined and assaulted inside 52 Athletic St]

- [53] The defence further argues that Cst. Fudge's testimony on the voir dire revealed information that should be considered on review with respect to whether Mr. Alexander resided at 52 Athletic Street.
- [54] As already noted, Cst. Fudge's assertion in the ITO that Mr. Alexander lived at this address appeared to be supported by two things. First, the ITO stated that Cst. Fudge was present on June 14, 2022 when a search warrant was executed at 52 Athletic Street, during which Mr. Alexander was found and arrested inside the residence. Second, the ITO indicated that Mr. Alexander's residence was listed on the PRIME database as 52 Athletic Street. The ITO

explained that the PRIME database, "contains information in relation to police investigations, the originating agency, and complete police investigational reports, along with specific entity particulars such as birthdates, telephone numbers, addresses and persons associated to the event".

- [55] In cross-examination, Cst. Fudge testified that, while he believed that PRIME was updated as new information about a person was added to the system based on information gleaned by police in their work, he could not discount the possibility that the address listed for Mr. Alexander on PRIME came from an earlier investigation, which he explained had probably occurred before 2022, during which Mr. Alexander was associated with 52 Athletic Street.
- [56] Cst. Fudge further testified that when he saw Mr. Alexander at this address during the execution of the search warrant on June 14, 2022, he had believed that Mr. Alexander lived there but could no longer remember the basis for that belief.
- [57] Having heard Cst. Fudge's testimony, I tend to agree with the defence that the amplified record is less compelling than the ITO, with its somewhat conclusory assertion, in supporting the determination that Mr. Alexander lived at 52 Athletic Street.
- [58] The Crown says I should treat the PRIME information as having independent weight, and significantly so, despite the absence of any detail as to the source or timing of the data that resulted in Mr. Alexander's address being listed as 52 Athletic Street. However, the absence of such detail, not including even the date of the PRIME entry, convinces me that only modest weight at best should be attached to the entry on the issue of whether Mr. Alexander resided at 52 Athletic Street: *R. v. Sunner*, 2017 BCSC 2445 at para. 31; *R. v. Hothi*, 2022 BCSC 773 at paras. 24-25.
- [59] I say "only modest weight at best", instead of no weight, because given Cst. Fudge's evidence as to how and when PRIME is updated, a reasonable inference could perhaps be drawn that the PRIME entry was the result of the police finding Mr. Alexander at 52 Athletic Street when they executed the search warrant on June 14, 2022 and also of the pre-2022 investigation, and that the most recent investigation in particular yielded evidence indicating that Mr. Alexander was not only associated with that address but actually resided there.
- [60] However, I need not determine whether it would have been reasonably open to the issuing justice to draw such an inference on the amplified record, because my conclusion on this Charter application would remain unchanged even were I to give no weight to the PRIME entry. I will therefore proceed on this basis and ascribe no weight to the entry.
- [61] Finally, the defence asked me to take into account Cst. Fudge's testimony that he had neither conducted a CPIC search on Mr. Alexander, even though that search would have revealed the address on his driver's license, nor checked to see whether Mr. Alexander was on bail, the conditions of which might have listed a current address. I do not, however, find it necessary to include this information in the amplified record. Cst. Fudge did not have an obligation to conduct these additional searches. Rather, his not having done so permits the defence to

argue that the limited information in the amplified record provides no basis to reasonably conclude that Mr. Alexander lived at 52 Athletic Street. See Le at paras. 47-53.

Directions from a Five-Way Stop

[62] The key defence submission in arguing a s. 8 Charter breach is that, while in the ITO Cst. Fudge stated that the directions provided by Mr. Grobowsky identified 52 Athletic Street as the place where the assault took place, the additional information provided in Cst. Fudge's testimony could not reasonably permit this conclusion on the requisite standard of credibly-based probability.

[63] In his statement, Mr. Grobowsky provided Cst. Weselowski with the following information when asked to describe the location of the residence in which he was assaulted:

Q. And where's that?

A. It is just, you go up that 5 Way stop past the store.

Q. Uh huh.

A. And then you cro--, take a right to the next street.

Q. Yeah

A. You go over the train tracks, take your first left and then your first right and it's the house on the right.

Q. Is that the one o--, on Athletic Street?

A. I, I don't know what the name of the road is.

[64] A secondary defence argument is that, in reciting these directions in the ITO, Cst. Fudge omitted two relevant pieces of information. First, he left out the part of the statement where Mr. Grobowsky appeared to correct himself, stating: "And then you cro--, take a right to the next street" (omitted part italicized). Second, the ITO pointed out that Cst. Weselowski asked Mr. Grobowsky whether he was describing Athletic Street, but did not mention that Mr. Grobowsky had replied that he did not know the name of the road.

[65] I find neither of these arguments to be very compelling in terms of suggesting the Cst. Fudge left out material information.

[66] Regarding the first point, Mr. Grobowsky indisputably corrects himself, and while it is impossible to know exactly what he was going to say, a strong likelihood is that he had been jumping ahead to describe crossing the train tracks but then realized that it was necessary to describe a prior step in the route. At the very least, it would have been reasonably open to the issuing justice, if provided with this part of the statement, to draw this very inference.

- [67] As for the second point, it is apparent that Cst. Fudge included Cst. Weselowski's question, not to imply that Mr. Grobowsky agreed, but to suggest that, like Cst. Fudge, Cst. Weselowski believed that following Mr. Grobowsky's directions would lead to Athletic Street. I find it unlikely that the issuing justice would have inferred from the failure to include Mr. Grobowsky's answer that Mr. Grobowsky had agreed that the residence was on Athletic Street. Read as a whole, the ITO made it clear, albeit implicitly so, that Mr. Grobowsky did not know the name of the street. In short, the absence of a reference in the ITO to Mr. Grobowsky's response leads to the sensible inference that Mr. Grobowsky did not know the street name: Nguyen at para. 50; R. v. Ali, 2014 BCSC 2417 at para. 88.
- [68] Ultimately, the Crown does not oppose me considering the further detail from Mr. Grobowsky's statement regarding these two points as part of the amplified record, and I am prepared to do so as requested by the defence. For the reasons just given, however, this further detail does not appear to materially impact whether the search warrant for 52 Athletic Street could have issued.
- [69] In fairness to the defence, these arguments were presented as relatively minor, compared with the main submission that Mr. Grobowsky's directions do not permit the reasonable inference on the standard of credibly-based probability that he was describing 52 Athletic Street, and that Cst. Fudge's grounds for concluding otherwise are therefore unreasonable.
- [70] In making this submission, the defence put to Cst. Fudge that starting from the five-way stop to which he believed Mr. Grobowsky was referring, around the intersection of Fifth and Pine Streets, required at least some modification to or non-literal interpretation of Mr. Grobowsky's directions in order to take a traveller to 52 Athletic Street. Specifically, if a motorist drove west on Fifth Street, as Cst. Fudge proposed, they would not turn right on to a different street before crossing the railway tracks.
- [71] While Cst. Fudge agreed that travelling from this five-way stop westwards would not involve a right turn on to a different street before traversing the train tracks, he pointed out that Fifth Avenue had a "noticeable break" or "veer" to the right just after the five-way stop, which he viewed as consistent with Mr. Grobowsky's instruction to "take a right to the next street" before crossing the tracks.
- [72] The defence also elicited from Cst. Fudge that there were at least five other five-way stops in Nanaimo. The defence suggested to Cst. Fudge that following Mr. Grobowsky's directions from one of these five-way stops, at Fitzsimmons and Wallace Streets, would actually lead to the RCMP detachment.
- [73] The defence contended that, given the number of five-way stops, and Mr. Grobowsky's failure to indicate the direction in which the journey would begin, on the amplified record it would not have been reasonably open to the issuing justice to conclude on the standard of credibly-based probability that Mr. Grobowsky was referring to the residence at 52 Athletic Street.

- [74] In advancing their respective positions on this point, the parties provided the witness and court with numerous Google maps. I should add that, in closing submissions, the Crown referenced a sixth potential five-way stop, which I have also considered as a possible starting point from which to reach the residence where Mr. Grobowsky said he had been assaulted.
- [75] I have reviewed these maps and counsels' associated submissions in assessing what inferences can reasonably be drawn from the amplified record on the standard of credibly-based probability. In particular, I have applied Mr. Grobowsky's directions starting at each of these six origin points and travelling in every direction available based on the roadway configurations. In doing so, I have considered whether following the directions could reasonably be viewed as resulting in a journey that crosses train tracks to get to a residential area. My conclusions in this regard are described in the next section of these reasons.

Applying the Test on Review Based on the Amplified Record

- [76] In my view, the material in the ITO as amplified by the evidence on the voir dire, viewed as a whole and not in a piecemeal fashion, allows for the reasonable inference on the standard of credibly-based probability - as opposed to a mere suspicion - that the residence at which Mr. Grobowsky was assaulted was 52 Athletic Street, and thus provides a proper basis upon which the impugned search warrant could issue.
- [77] The main factors I have considered in coming to this conclusion are as follows.
- [78] First, a motorist travelling the route identified by Cst. Fudge as leading to 52 Athletic Street, that is, westward on Fifth Street from the intersection at around Fifth and Pine Streets, would need to take a significant turn to the right not long after beginning the journey, as Cst. Fudge described in his testimony. While this is not a 90-degree right turn, it could reasonably be described as taking "a right to the next street" by someone visualizing the journey in terms of the direction travelled. I will return to and elaborate on this point later in my reasons.
- [79] Second, the vast majority of the journeys from available routes originating from the six five-way stops identified in the evidence would not involve crossing train tracks to get to a residential area, either because no train tracks would be crossed at all, or because the train tracks that would be crossed are on the east side of Nanaimo, near the water, which would put the traveller in an industrial area without residences, as testified to by Cst. Fudge. On this basis alone, these routes could be reasonably excluded from consideration in attempting to identify the route that Mr. Grobowsky intended to describe to Cst. Weselowski.
- [80] The defence argued that Mr. Grobowsky may have been describing how to travel to the place where he was assaulted by foot, which if true would bring back into consideration some of routes that would otherwise be excluded because they would not involve crossing train tracks if travelling in a vehicle. However, it would reasonably be open to a justice to conclude that Mr. Grobowsky was not referring to a trip taken on foot, because he did not say anything to Cst. Weselowski about needing to leave a vehicular roadway to cross train

tracks as a pedestrian.

- [81] Third, some of the five-way stops are considerably farther away from 52 Athletic Street than is the location where police encountered Mr. Grobowsky after he was seen walking down an alley in bad shape and stumbling onto a property. I do not rule out as unreasonable the possibility that Mr. Grobowsky was driven all or part of the way from where he had been assaulted. But given that he was only seen on foot, it would be reasonably open to a justice to conclude that he had walked from the residence where he was beaten to where he was found and that, given his significant injuries, he was unlikely to have travelled a long way. This factor is not, however, necessary to my conclusion on this application.
- [82] Fourth, the route identified by Cst. Fudge in his testimony led to 52 Athletic Street, where just six weeks before the police had executed a search warrant in investigating a complaint of forcible confinement. Notably, this earlier suspected crime is the same as the one reported by Mr. Grobowsky.
- [83] Other suspected criminal activity at a location or by an individual can be relied on to help establish reasonable grounds, provided the prior activity is of a type that is relevant to the investigation and did not result in charges that were dismissed: *Le* at paras. 78-83; *R. v. Charlton*, 1992 CanLII 367 (B.C.C.A.), [1992] B.C.J. No. 1405 (C.A.) at paras. 32-34. Neither of these caveats applies here.
- [84] While the amplified record in this case does not indicate whether 52 Athletic Street was the place where the June 2022 forcible confinement was alleged to have occurred, it would have been open to a justice to infer that there had been reasonable grounds to believe that the residence contained evidence pertaining to the suspected forcible confinement.
- [85] Fifth, Mr. Grobowsky told Cst. Weselowski that the abductor he had previously known was named "Pete", and had used the gun and lived at the residence where he was detained and beaten. The material in the ITO associates Mr. Alexander with 52 Athletic Street, and states that his first name is Peter. Plus, Mr. Alexander's association with this residence included being arrested there when police executed the search warrant as part of the previous forcible confinement investigation. This association could reasonably be relied on to help establish reasonable grounds even without the inference that Mr. Alexander lived at 52 Athletic Street.
- [86] In concluding that the amplified record could support the finding that Mr. Grobowsky was assaulted at 52 Athletic Street on a standard of credibly-based probability, I ascribe particular importance to the fourth and fifth points in my list of factors, taken together with the directions provided by Mr. Grobowsky.
- [87] The information connecting 52 Athletic Street to a recent suspected forcible confinement and also connecting Mr. Alexander, whose first name is Peter, to that same address, makes it more likely than would otherwise be the case that Mr. Grobowsky was describing a westbound journey on Fifth Street, starting from Pine Street or thereabouts. Concomitantly,

this information makes it less likely than would otherwise be the case that he was referring to a different five-way stop or direction of travel or was providing intentionally inaccurate directions.

- [88] This same information also makes it more likely than would otherwise be the case that the significant veer or turn to the right on Fifth Street, travelling westward from the five-way stop at around Pine Street before crossing the train tracks, is what Mr. Grobowsky was referring to at the second step in the directions he gave to Cst. Weselowski, even though the journey did not strictly speaking involve taking "a right to the next street".
- [89] To be clear, I am not suggesting that the only available reasonable inference on the amplified record is that Mr. Grobowsky was referring to a westward journey from this origin point. Rather, I am saying that this inference was reasonably available on the requisite standard when viewed together with: (a) the information about the earlier forcible confinement at 52 Athletic Street; and (b) Mr. Alexander's first name and connection to that address, including his presence there and arrest when the previous search warrant was executed.
- [90] I appreciate that there may well be some other residences in addition to 52 Athletic Street, albeit not many, that a motorist could reach by following Mr. Grobowsky's directions from one of the five-way stops identified, and the record as amplified provides no information about those residences or their occupants. While this absence of information leaves open the reasonable possibility that Mr. Grobowsky was describing another place, and not 52 Athletic Street, in my view it does not render unreasonable the inference, on the standard of credibly-based probability, that 52 Athletic Street is indeed where he was confined and beaten.

Conclusion

- [91] Given the information provided in the ITO, as amplified by the evidence on the voir dire, it would have been reasonably open to a justice to conclude that there was a credibly-based probability that evidence regarding the offences committed against Mr. Grobowsky would be found at 52 Athletic Street.
- [92] If presented with this amplified record, a justice could therefore have issued the search warrant, which means that Mr. Alexander has not established that his Charter right to be secure against unreasonable search or seizure was breached by the search at 52 Athletic Street.
- [93] The presumption that the warrant was validly issued not having been displaced, I am dismissing Mr. Alexander's Charter application to exclude the evidence obtained from the ensuing search.

"D. Layton J."

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