

CANADA / JUDGMENT

R. v. Bridgen

2022 BCCA 429

COURT

British Columbia Court of Appeal

DECIDED

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2022 BCCA 429 R. v. Bridgen

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Bridgen,

2022 BCCA 429

Date: 20221221

Docket: CA47329

Between:

Rex

Respondent

And

Amber Holly Kristeen Bridgen

Appellant

Before:

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Voith

The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated

October 16, 2020 (conviction) (R. v. Bridgen, New Westminster Docket X081446).

Counsel for the Appellant:

D. Markovitz

Counsel for the Respondent:

J.N. Walker

Place and Date of Hearing:

Vancouver, British Columbia

November 16, 2022

Place and Date of Judgment:

Vancouver, British Columbia

December 21, 2022

Written Reasons by:

The Honourable Madam Justice Newbury

Concurred in by:

The Honourable Mr. Justice Voith

The Honourable Madam Justice Horsman

Summary:

Appellant was convicted of possession of illegal drugs for purposes of trafficking after a search of her residence yielded evidence of such activity. Legality of search was challenged on three bases, including that police had misled issuing justice by failing to inform him of the fact, discovered during the search, that there were two "residences" in the house at the address named in the warrant.

Appeal dismissed. Police had suspected two residences might be in the house, but were uncertain until search was carried out. Their inquiries prior to search had not indicated two residences. Only the residence of the appellant was searched, and the reviewing judge correctly regarded this matter as a "distraction" from the question of whether the ITO had contained information on which the issuing judge could have reasonably relied in authorizing the search. The judge had not been misled and no one's rights under s. 8 of Charter had been breached.

Reasons for Judgment of the Honourable Madam Justice Newbury:

- [1] The appellant Ms. Bridgen appeals her conviction for possession of illegal drugs for the purposes of trafficking, contrary to the Controlled Drugs and Substances Act, S.C. 1996, c. 19 ("CDSA"). In particular, she challenges the validity of a search warrant that authorized a search of her home, which yielded evidence leading to her arrest.

- [2] Since *R. v. Garofoli* [1990] 2 S.C.R. 1421, the "basic test" in Canada for determining the reasonableness of a search warrant under s. 8 of the Charter has been clear. At the issuing stage, the judge must be satisfied by affidavit evidence that there are reasonable and probable grounds to believe that a specified crime has been or is being committed, and that the search sought to be conducted will afford evidence of the crime. "Reasonable grounds" does not require proof -- even proof on a balance of probabilities or a *prima facie* case. In *R. v. Debot* [1989] 2 S.C.R. 1140 at 1166, it was said that the phrase "reasonable belief" approximates the standard.
- [3] Where the search warrant is later challenged under s. 8 of the Charter, its validity is presumed and the onus is on the accused to show that the search was not reasonable. The reviewing judge does not carry out a review of the authorization *de novo* and does not substitute his or her view for that of the authorizing judge. Again, the question is whether the issuing judge could have properly authorized the warrant.
- [4] The Court in *Garofoli* confirmed that evidence of a tip from an informer, by itself, is insufficient to establish reasonable and probable grounds. (At 1456.) Instead, the reliability of the tip is to be assessed by recourse to the "totality of the circumstances", which may include the degree of detail of the tip, the informer's source of knowledge and indicia of the informer's reliability such as past performance or confirmation from other investigative sources. Further, "[t]he results of the search cannot, *ex post facto*, provide evidence of reliability of the information." (At 1457.)
- [5] Where erroneous information has been provided in the information to obtain ("ITO"), the warrant is not thereby automatically vitiated: see *R. v. Bisson* [1994] 3 S.C.R. 1097; *R. v. Plant* [1993] 3 S.C.R. 28; *R. v. Morris* (1998) 134 C.C.C. (3d) 539 (N.S.C.A.) at 557. As the Court observed in *Garofoli*, "errors in the information presented to the authorizing judge, whether advertent or even fraudulent, are only factors to be considered in deciding to set aside the authorization". (At 1098.) However, any deception will be viewed seriously (see *R. v. Monroe* (1997) 8 C.R. (5th) 324 (B.C.C.A.) at para. 27) and the court will not condone the presentation of deliberately misleading statements to judicial officials. (Morris at 554.)
- [6] The reviewing judge may permit the ITO to be 'amplified', often by cross-examination of the affiant, and must then determine whether there is "sufficient reliable information, that is, information that may reasonably be believed on the basis of which the authorization could have issued." (*R. v. Araujo* 2000 SCC 65 at para. 52.) This analysis is "contextual" and must be based on the totality of the circumstances -- an approach that is said to balance appropriately the need for judicial finality and the need to "protect prior authorization systems." Thus *Cromwell J.A.*, as he then was, stated in *Morris*:

The issue of amplification, at the level of principle, is concerned with the balance between the two requirements for a warrant: the reasonable grounds of belief requirement and the prior authorization requirement. The Supreme Court of Canada has held that the primary focus is on whether the reasonable grounds of belief requirement was met when the warrant issued. The

Court's treatment of amplification is consistent with this. Allowing evidence after the fact showing that reasonable and probable cause existed at the time the warrant was obtained is an indication that the existence in fact of such grounds is an important consideration on review.

This is not to say that failure to provide complete and accurate information during the prior authorization process will be ignored; far from it. It is open to a court to invalidate the warrant where that process has been fundamentally subverted. In addition, the court is required to exclude from consideration material that was obtained in breach of the Charter. Also to be excluded is material that was deliberately and purposefully false or misleading in the sense that it was known to be false or materially misleading and was placed before the justice for the purpose of making the grounds appear more substantial than they were. [At 567-8.]

[7] Where the ruling of the reviewing judge is appealed, the appeal court must show deference to the reviewing judge in the same way as the reviewing judge must show deference to the authorizing judge. As stated by Charron J.A., as she then was, in *R. v. Grant* [1999] 132 C.C.C. (3d) 531 (Ont. C.A.), I've to app dismiss'd 27243 (25 January 2001):

This court is also a reviewing court and the test in *Garofoli* is applicable on this appeal. In addition, the usual deference is owed to the findings of the trial judge in her assessment of the record "as amplified on the review" and her disposition of the s. 8 application. In the absence of an error of law, a misapprehension of the evidence or a failure to consider relevant evidence, this court should not interfere with the trial judge's conclusion. [At para. 18; emphasis added.]

See also *R. v. Iraheta* 2020 ONCA 766 at para. 21; *R. v. Liu* 2014 BCCA 166 at para. 40.

[8] With these general principles in mind, I turn to the case at bar.

Factual Background

[9] On April 13, 2016, Cst. Paul, an RCMP officer working in Maple Ridge, swore an ITO pursuant to s. 11 of the CDSA. In it he asserted he had reasonable grounds to believe, and did believe, that Fentanyl, crystal methamphetamine, packaging material for different types of drugs, scales, money and cellular phones would be found at "the residence of AMBER HOLLY BRIDGEN at 22318 - 117th avenue in Maple Ridge", and would thus afford evidence of possession of illegal drugs for the purpose of trafficking contrary to s. 5(2) of the CDSA.

[10] In an appendix to the ITO, Cst. Paul stated that he had received information from two confidential informants of "known reliability", Informant "A" and Informant "B". He provided details of his past experience with the two informants. He had known each since a specified year; their information had been given voluntarily; he had provided payment to each of them on a specified number of occasions; each was "known to use drugs, and as a result, frequent many locations within Maple Ridge known for drugs and drug related activity"; and for each informant, the primary motivation for providing information was the opportunity for monetary benefit. He had provided payment to both informants on previous occasions.

- [11] Both were unwilling to testify in court on the information provided, as both feared for their safety should their identities become known.
- [12] Each informant had told the constable that a person called "Amber" was "loading" (supplying) street level drug dealers with "Fent" and "side" (meaning Fentanyl and crystal methamphetamine respectively). In each case, a list of five individuals being "reloaded" by "Amber" was provided, together with the fact that "Amber" drove a black car, lived near 117 Avenue and 223 Street and walks her dog, a pit bull. In each case, a Mr. Vrban was named as one of the individuals being "reloaded" by "Amber".
- [13] The constable went on to give details of his knowledge of individuals identified by the two informants and his observation of a black Jeep parked in the rear of the driveway at 22318 - 117 Avenue. The vehicle was registered in the name of the appellant Ms. Amber Bridgen. A previous check carried out in January 2016 by another constable disclosed that a female identified as "Bridgen" had been "located" at Lougheed Highway and 223 Street with her dog. She told the police at that time that she "mostly lives at her boyfriend's residence on 117 Avenue near 223 Street." Later information disclosed that the dog liked to find rats under garbage cans, consistent with information given by "Amber" in a police "street check" on February 1, 2016.
- [14] The balance of the exhibit detailed police surveillance on ten different days between January 14, 2016 and April 7, 2016. This consisted of Ms. Bridgen's comings and goings from the residence at 22318 - 117 Avenue for various purposes, including shopping. Many of the trips, however, consisted of driving to particular locations and meeting individuals who either entered her car for a brief time and then exited, or whom Ms. Bridgen left her car to meet on foot. The meetings were very brief, but Cst. Paul was unable to observe any hand to hand exchange. Nevertheless, he deposed that in his experience as a drug investigator, "it is common for drug traffickers to pick up a buyer in their vehicle, drive a short distance and have the drug buyer exit the vehicle." On a few occasions, the person Ms. Bridgen was meeting was identified as Mr. Vrban, who (Cst. Paul deposed) lived on 222 Street and was "well known for property crime offences and drug trafficking in Ridge Meadows." Cst. Paul had in fact arrested him on January 14, 2014 and found crystal methamphetamine, crack cocaine, and a scale in his possession.
- [15] On Day 10 (April 7), surveillance was again conducted by the RCMP. Cst. Paul recounted:
- ... As VRBAN is a known associate of BRIDGEN and has been observed attending her residence, Constable WILCOTT was in an unmarked police vehicle outside of BRIDGEN's residence at 22318-117 Avenue.
- a. 19:45 hours - BRIDGEN's black Jeep bearing BC licence plate 615WLF was parked in the rear driveway of 22318 117 avenue. Also parked in the rear driveway was a grey 2002 Honda Civic bearing BC licence plate CK303F.
- b. 22:15 hours - Surveillance of 22318 117 avenue concluded.

- c. 22:20 hours - An unknown male ("UM#1") matching VRBAN's description was observed walking southbound on 223 street. Visual continuity of UM#1 was then lost.
- d. 22:27 hours - Surveillance was again established on 22318 117 avenue as it was believed that UM#1 may have gone into that residence.
- e. 22:37 hours - Sensor light at the rear of 22318 117 avenue came on.
- f. 22:38 hours - BRIDGEN and an unknown female ("UF#1") exited the house and stood on the front porch.
- g. 22:38 hours - UM#1 exited 22318 117 avenue and was wearing camo pants, black long sleeved shirt with red writing on it. UM#1 departed northbound on 223 street on foot.
- h. 22:45 hours - UM#1 was identified as VRBAN a short distance away and was arrested for prohibited driving. Surveillance was concluded also at that time.

Summary of surveillance -- day #10

During the three (3) hours of surveillance, VRBAN was observed walking towards BRIDGEN's residence at 22318 117 avenue. Approximately ten (10) minutes later BRIDGEN, VRBAN and an unknown female were observed exiting 22318 117 avenue with VRBAN departing northbound on foot. VRBAN's identity was confirmed by police and he was arrested for prohibited driving approximately two (2) blocks north of BRIDGEN's residence. Incidental to arrest, Constable BARR conducted a thorough search of VRBAN and located the following items on his person:

- a. 116.4 grams of Crystal Methamphetamine;
- b. 40.1 grams of Fentanyl;
- c. \$4150.35 in Canadian currency;
- d. a scale; and
- e. cellular phone.

I believe that VRBAN attended 22318 117 avenue and purchased the controlled substances from BRIDGEN. VRBAN was inside BRIDGEN's residence for approximately ten (10) minutes before departing on foot. In my experience as a drug investigator, a visit of this nature is consistent with the sale and purchase of controlled substances. This evidence also consistent with information provided by Informant 'A' and Informant 'B' that BRIDGEN is reloading VRBAN with Fentanyl and Crystal Methamphetamine which VRBAN then sells at the street level to drug users. The street level value of the Fentanyl and Crystal Methamphetamine seized from VRBAN is approximately \$19,660 in Canadian currency. [Emphasis added.]

[16] With respect to Ms. Bridgen's residence, the constable made the following observations:

Single-family one (1) story [sic] split residence located on the south side of 117 avenue. There is a driveway at the back of the residence from the rear laneway. The front door is up a short walkway directly on the front of the house. The address "22318" is clearly labeled on the front of the residence. There is a rear entrance on the south east corner of the house.

He deposed that he had attended the Maple Ridge City Hall on February 29, 2016 and obtained a floor plan of the house, which indicated a one-storey single-family home "with a front and rear doorway." In March 2016, he also accessed a municipal program called "Lookout" which showed that the residence was owned by two individuals other than Ms. Bridgen. The police did not observe any vehicles registered in their names and did not locate any police file related to them. Cst. Paul stated that he believed they were the "landlords" and that they rented the property to Ms. Bridgen.

- [17] Elsewhere in the exhibit, Cst. Paul deposed that he believed Ms. Bridgen was the "primary occupant" of 22318 - 117 Avenue.
- [18] After summarizing the information provided, the constable deposed that the pattern of Ms. Bridgen's brief meetings with various individuals away from her residence and then returning to her residence shortly thereafter, was the basis of his belief that she was storing controlled substances inside; that the drugs and scale found on Mr. Vrbanc on April 7, 2016 had been provided to him by Ms. Bridgen; and that she was "storing and selling Fentanyl and crystal methamphetamine from within 22318 - 117 Avenue, which is presently occurring and is an ongoing activity."
- [19] The constable said he had been involved in approximately 30 search warrant investigations, in the majority of which he and other officers had seized 'score sheets', scales, packaging materials for drugs and cell phones used by drug dealers for the purposes of trafficking. He concluded:

Pursuant to Section 11 of the Controlled Drug and Substance Act, I believe that there are reasonable grounds that the offence of Possession for the Purpose of Trafficking is being committed, and that the recovery of the following things inside of 22318 117 avenue will afford evidence under the CDSA, namely:

- a. Fentanyl, Crystal Methamphetamine, documents recording the names of persons who are indebted for drugs ("score sheets"), documents indicating proof of residency, packaging material for different types of drugs, scales, money and cellular phones.

Therefore I am requesting authorization to enter:

- b. The residence of Amber BRIDGEN located at 22318 117 avenue, Maple Ridge, British Columbia, between the hours of 9:00 a.m. and 9:00 p.m. by day, on April 14, 2016. [Emphasis added.]

- [20] A warrant to search the residence located at the address given was granted pursuant to s. 11 of the CDSA on April 14, 2016. Ms. Bridgen was arrested on the same day while sitting alone in her vehicle in a store parking lot. The search of her person incidental to arrest yielded a Blackberry cellphone, two baggies of Fentanyl and one of methamphetamine, together with \$165 in cash. Another baggie of methamphetamine and \$715 in cash were found in her wallet.
- [21] Thereafter, the search warrant was executed at her residence. The police entered by means of keys Ms. Bridgen provided to them. According to an agreed statement of facts ("ASF"), no one was present at the residence during the search:

The police searched only Ms. Bridgen's residence at 22318-117 Avenue. Ms. Bridgen's residence at 22318-117 Avenue was self contained, secure and separate from the suite at the front of 22318-117 Avenue.

Ms. Bridgen also admitted that she was the registered owner of the black Jeep Cherokee during the entire time of the investigation and at the time of her arrest.

- [22] At the residence, police found various bags containing Fentanyl (52.46 grams in total), methamphetamine (28.35 grams in total), cocaine (18.18 grams total), Fentanyl/heroin mixture (2.31 grams), Fentanyl/heroin/methamphetamine (0.1 grams), and Fentanyl/cocaine/heroin/methamphetamine mixture (0.37 grams), for a total of 101.77 grams of controlled substances. As well, police found a total of \$7,695 Cdn. and \$184 US, score sheets, packaging material, scales, numerous cellphones and a safe. In the ASF, Ms. Bridgen admitted that the street value of the seized substances was between \$12,410 and \$15,470 and that the seized Fentanyl, cocaine, heroin and methamphetamine had been "held for sale, not for personal use."

The Search Warrant Challenge

- [23] In January 2020, Mr. Justice Harvey heard a voir dire in the Supreme Court of British Columbia concerning the validity of the search warrant. Ms. Bridgen applied to cross-examine Cst. Paul as the affiant of the ITO. Ultimately, it was agreed, however, that a specified portion of his evidence from the preliminary inquiry would be adduced into evidence on the search warrant voir dire. Passages from the transcript of the inquiry, namely from line 1 of page 8 to line 4 of page 11 and lines 14-23 of page 33, were admitted into evidence for amplification purposes. We were not asked to admit additional portions of the transcript on the appeal.
- [24] In the pages of the transcript that were admitted, Cst. Paul was cross-examined at some length concerning the steps he had taken to confirm Ms. Bridgen's place of residence before applying for the search warrant. Cst. Paul testified that through his inquiries at City Hall, he had become aware that the property was owned by a Martin Chung and a Winnie Zeng. He had not contacted them and said that normally police would not contact the landlord of property to be searched "because we don't know ... what type of connection they have with

their tenant." In the course of their search, the police had found a tenancy agreement between the said landlords and two individuals, one of whom was Ms. Bridgen. Cst. Paul did not recall the name of the second person and indeed did not recall a second person appearing as tenant other than Ms. Bridgen. The following exchange appears in the admitted portion of the transcript:

Q Now, the residence itself, you came to realize was actually two separate residences.

A Correct.

Q Okay. The front of the residence that ran along 117th Avenue was occupied by a separate tenant.

A It was, yes.

Q Okay. And the back of the residence was the area that Ms. Bridgen was believed to occupy.

A Correct.

Q And the front and the back of the residence were separated by a laundry room?

A Yes, I recall not in detail but there was some sort of a wall that had been put in there. I believe it was originally at one time one home.

Q And on either side of the laundry room, there was a -- a door that could provide security to the tenant on the other side?

A Yes.

Q And when you and members went to execute the search warrant, that door was locked leading to the residence towards the front?

A That I don't recall.

Q At what point did you come to realize the front of the residence was a -- a completely separate unit?

A That wasn't until we -- we entered the residence. We had believed through covert surveillance that there was two separate tenants, but we -- we did not know if that -- if it was a legal suite. As far as the City knew, it was one home or as far as we knew it was one home. But based on our observations during surveillance, it was clear that it was most likely going to be two separate suites.

Q So throughout the roughly three months of surveillance you did, or I guess closer to four, Ms. Bridgen was seen frequently attending the back of the residence.

A Yes, she would -- her car was parked in the - in the rear and she would walk to a small entranceway on the -- the east side of the home -- sorry, the southeast side of the home.

Q And the fact that she was entering and exiting through the back versus the front was one of the things that led you to believe the front was likely a separate unit.

A Yes.

Q And so your belief that it was a separate unit or likely to be a separate unit arose prior to applying for the search warrant?

A Our belief that that was a possibility, yes.[Emphasis added.]

At page 33 of the transcript the following was also admitted:

Q And that entry was planned to be through the rear of the residence?

A It was planned to be -- yes, through the door that Ms. Bridgen had been coming and going from.

Q The door on the rear east side?

A Correct.

Q And you planned to enter through that door because you believed that was the door likely associated to her unit?

A Correct.

[25] As stated in the Crown's factum, the appellant argued in the voir dire that there had been insufficient grounds for the issuance of the warrant and that in particular the ITO contained conclusory and misleading statements and material omissions. Counsel submitted that reasonable grounds had not existed for Cst. Paul's belief that drugs would be found in the residence; that the constable had expressed opinions he was not qualified to give; and that he had failed to disclose that there were in fact two units at the subject address.

Voir Dire Reasons

[26] In his reasons on the voir dire (indexed as 2020 BCSC 649), Harvey J. described the factual background leading to Ms. Bridgen's arrest and the execution of the search warrant. He correctly stated the applicable law, including the principle that the standard of "reasonable belief" or "reasonable possibility" does not require proof on the civil standard of a balance of probabilities, but does require "something more than suspicion". He also confirmed that:

Where the grounds, as here, include information from a confidential informant, the court must look to the degree of detail of the information provided, the informer's source of knowledge, and any indicia of the informer's reliability such as past performance or confirmation of his or her information from other investigative sources. The reasonable grounds standard does not require consideration of or exclusion of all possible innocent inferences or explanations: see *R. v. MacCannell*, 2014 BCCA 254. [At para. 45.]

- [27] Although the appellant submitted that Cst. Paul had provided opinions that required specialized training, the reviewing judge did not agree that the warrant should therefore be quashed. Even without Cst. Paul's commentary, he said, the interactions described between Ms. Bridgen and the alleged purchasers of illegal drugs were "more consistent with commerce than friendship". In the judge's analysis, "... not much more was needed by way of the affiant's opinion as to the effect of those [interactions], that the warrant was properly issued in respect of the assertion that the accused was probably trafficking in drugs as was reported by the confidential informants." (At para. 61.) He agreed with the Crown that a "common sense approach" to the whole of the unchallenged factual assertions gave rise to the reasonable and probable grounds necessary for the warrant to issue in respect of the probability of Ms. Bridgen's being "actively involved in drug trafficking regardless the weight afforded to the contents of the summaries."
- [28] A "bigger issue", in the judge's opinion, was whether the ITO provided "reasonable grounds" to believe that evidence of drug offences would be located in the residence, thus satisfying s. 11(1) of the CDSA. Harvey J. found at para. 65 that the ITO, absent the summaries provided by Cst. Paul, led to no other conclusion than that during the surveillance period, Ms. Bridgen resided at 22318 - 117 Avenue in Maple Ridge; and at para. 68 that he had no doubt the appellant had been "reasonably and probably engaging in trafficking" at the time of the police surveillance. He noted Liu, where the ITO had not provided any basis for the belief that drugs were being stored in the appellant's residence. Harvey J. in the case at bar distinguished Liu on the basis that:
- the multiple contacts with known drug dealers at locations where drugs were commonly exchanged, her attendance for two minutes at Maple Court Apartments, her journey to the park, her incidental contact for 15 seconds with Mr. Vrbn, the contact somewhere down the road from her home with the Chevy Blazer said to be associated with Hanson, and then the meeting briefly at the side door are all indications of her going directly from the residence to what was reasonably perceived to be drug action. [At para. 74.]
- [29] As for the incident on day 10 of the surveillance when the police had briefly lost sight of Mr. Vrbn, his later presence at the residence had to be seen "in light of all the other information available, firstly to the affiant, and then that was available to the issuing justice" without Cst. Paul's commentary. The incident was "but one in a series of transactions leading to the reasonable probability that drugs were being supplied from the accused's residence at 22318 - 117 Avenue, Maple Ridge." (At para. 76.)
- [30] Harvey J. next addressed the fact that the "possibility or probability of a second suite" had not been mentioned in the affidavit. Although he agreed that the potential existence of such a suite should have been referred to in the ITO, he did not find it fatal to the issuance of the warrant. In his analysis, the omission did not go to the "core question" of whether the warrant could still have issued with the amplification respecting Cst. Paul's knowledge, prior to obtaining the warrant, that it was possible the house contained two suites and not just one.

[31] Harvey J. then adopted the Crown's submissions as follows:

It is undisputed that 22318 117 Avenue, Maple Ridge, British Columbia, was correctly described throughout the ITO as the accused's residence. Constable Paul took steps to determine whether there was one or more residence. In my view, inclusion of speculation over and above that as to whether there was a single residence or that there was an unregistered second suite was a distraction, not a necessary piece of information.

The existence of a second suite in a single-family residence is, I agree, not relevant to whether "the place" was Ms. Bridgen's "residence where the controlled substance could reasonably be found". The issue of a second suite has marginal relevance to the grounds contained in the ITO. Upon the suite being discovered, depending on police conduct after discovery of that separate suite, breaches could be asserted if they were relevant to the accused's privacy rights.

However, in my view, the inclusion of the information contained in the preliminary hearing would not have led to a different result.

In short, were the ITO to include information I have referenced that emerged from the preliminary inquiry, there would still have existed reasonable and probable grounds to conclude that the accused was engaged in drug trafficking and that it was reasonable and probable that evidence of such would be located at her residence, as described in the warrant that subsequently issued. [At paras. 83-6; emphasis added.]

In the result, he dismissed the application to exclude the evidence seized from Ms. Bridgen's residence.

[32] The subsequent proceedings in this matter are unclear, but by a ruling dated September 16, 2020, the trial judge permitted Ms. Bridgen to withdraw her guilty pleas to the offences of possession for the purposes of trafficking of Fentanyl and methamphetamine, because she had been unaware that her plea would preclude her from pursuing an appeal of the voir dire ruling. We are told that she was convicted again on October 16, 2020 and that no reasons were provided or are available. She was then sentenced in March of 2021 and filed her notice of appeal on March 17, 2021.

On Appeal

[33] In this court, Ms. Bridgen contends that the trial judge erred in:

- a) mixed law and fact when he held that the ITO sufficiently described the "place to be searched";
- b) mixed law and fact when he found that the affiant did not deliberately make material omissions that misled the issuing justice regarding the address; and,
- c) mixed law and fact when he relied on conclusory statements of the affiant regarding the meaning of the observations made by the surveillance team.

- [34] Although defence counsel's oral arguments in this court focused mainly on the fact that the dwelling at 22318 - 117 Avenue contained two rental suites, the appellant also submitted that the information provided by the confidential informants should be excised from the ITO because it contained no information as to whether either of the informants had ever been arrested for obstructing justice or for perjury, and no such detail had "arisen in amplification". The appellant also complains that it could not be inferred from the informants' information that Ms. Bridgen was supplying the named street dealers with drugs. Reference was made to *R. v. Debot* (1986) 30 C.C.C. (3d) 207 (Ont. C.A.), *aff'd* [1989] 2 S.C.R. 1140, where the Court of Appeal stated that in an ITO, the "underlying circumstances disclosed by the informer ... must be set out ... to ensure it is not based on mere rumour or gossip". (At 218-9.)
- [35] With respect, these submissions seem to assume that the trial judge must be satisfied that the information provided by confidential informants must be not only "compelling" (see *Debot* (SCC) at 1161), but must be probative by themselves of reasonable grounds. This is not the case. As we have seen, the reviewing judge must look at the totality of the evidence as amplified, and determine whether the ITO assessed as a whole could have supported the issuance of the warrant. As this court stated at para. 17 of *R. v. Luong* 2010 BCCA 158, the cumulative effect of the evidence is taken into account; the evidence is not assessed on a "piecemeal basis". (Citing *R. v. Storrey* [1990] 1 S.C.R. 241 at para. 17 and *R. v. Tran* 2007 BCCA 491 at para. 17.) Nor is there any "rule" that the criminal records of confidential informants must be provided, or that the Crown must disclose whether (or not) an informant has in the past been convicted of perjury or obstruction of justice.
- [36] In this case, the informants' information was not "mere rumour or gossip", and sufficient information was provided to permit the issuing judge to assess its reliability. (See also *R. v. Latimer* 2020 BCSC 2173 at paras. 34-7.) In my view, the judge applied the correct degree of scrutiny to the informants' information at paras. 48-51 of his reasons on the voir dire:

As to the reliability of the information from the confidential informants, the accused did not make much of this during argument. That said, the information, in my view, meets the test in *Debot*.

The information provided by two separate sources was sufficiently detailed to allow the accused to be identified on observation as the person referenced in the reports from the confidential informants and her subsequent association with known street dealers over the course of the 11 occasions of surveillance lends credence to the reliability of the information given, specifically the name, Amber, the area where she lived, her association with a black Jeep, and her association with a pit bull dog that she walked in the area.

The persons identified as street-level dealers were all known to police.

The subsequent association of the accused with Mr. Vrban, Ms. Fontaine, Mr. Bickell, Mr. Lawrence, and Ms. Hanson all further add to the reliability of the information that initiated this investigation.

Bearing in mind the deference owed to the reviewing judge, I would not accede to this ground of appeal.

- [37] Turning then to the main point of appeal, Ms. Bridgen contends that because the police believed prior to the execution of the warrant that there was a "possibility" or even probability there was a separate unit at the front of the house, the ITO did not "accurately describe" the place to be searched. (The search warrant authorized the search of "the residence of AMBER HOLLY BRIDGEN at 22318 117th avenue, Maple Ridge, BC.") Indeed, the appellant says this was not only a material omission, but a deliberate attempt to mislead the issuing judge.
- [38] Ms. Bridgen's factum contains some exaggerations and indeed mis-statements concerning what the police knew about the number of suites in the house and when. For example, the judge's finding at para. 79 that "the suite's existence came to be known after the search. The affiant took investigative steps of checking with the municipality for a registered suite; there was none" is said to reflect a "misapprehension and mis-statement of the evidence on the voir dire". In my view this is a mischaracterization. Cst. Paul testified at p. 10 of the transcript of the preliminary inquiry (which portion was entered into evidence for amplification purposes) that the police believed before applying for the search warrant that it was "a possibility" that Ms. Bridgen was going in and out of a "separate unit". Cst. Paul said he and his colleagues had discussed this possibility but "it was never something that we knew 100 percent." This was not shown to be untrue and as seen earlier, the inquiries made by the police did not indicate two suites.
- [39] The appellant also argues at para. 40 of her factum that the police never searched the "front residence" despite having a search warrant that would have allowed them to do so. Again, this challenge is misconceived. As we have already seen, the search warrant allowed the police to search the "Residence of Amber Holly BRIDGEN in 22318 117th avenue, Maple Ridge, BC." The reviewing judge noted this wording was "fortuitous" in that it confined the police to her part of the house. They searched her portion of the house at the given address. In my opinion, the reviewing judge was obviously aware of the possibility of a second suite, and did not misstate the evidence, as argued by the defence.
- [40] Defence counsel referred us to Liu, which I have already mentioned, and R. v. Campbell 2011 SCC 32. In the latter case, the body of a murdered woman had been found 100 metres from a townhouse that operated as a rooming house. The room of the appellant, Mr. Campbell, was located in the basement and three bedrooms on the second floor of the townhouse were rented to three unrelated tenants, including the deceased and a man who was ultimately convicted of the murder. Each tenant had a lock on his or her door and all three shared a bathroom on the second floor and a kitchen, living room and dining room on

the first floor. The police applied for and obtained a warrant to search the (entire) townhouse. In searching Mr. Campbell's room, they found a shotgun and ammunition. Mr. Campbell asserted that his rights under s. 8 of the Charter had been infringed.

- [41] The trial judge agreed with him, describing the drafting of the ITO as "intentionally confusing and opaque". The evidence was excluded under s. 24(2) of the Charter. When the matter reached the Supreme Court of Canada, the Court emphasized that the question for the reviewing judge was not whether the reviewing judge would have issued the warrant, but whether there had been sufficient credible and reliable evidence to permit the issuing justice to authorize the warrant. The Supreme Court went on to observe that in drafting ITOs purporting to search more than one unit in a multi-unit dwelling, a person's expectation of privacy in his or her own room is just as high as that of the resident of a single dwelling unit. In this particular case, however, the Supreme Court agreed that the issuing justice "could have viewed the tenants' residences in this townhouse as connected and overlapping unlike those in a large apartment building." (At para. 15.) The search and seizure were found to be constitutionally valid.
- [42] I am not persuaded that the failure of the police in the case at bar to state expressly their "suspicion" concerning the existence of two units in the house was misleading. This was not a multi-unit building as in Liu or Campbell. The police exercised due diligence in trying to find out if the house had more than one suite, but until they entered, they could not be sure. And, since the search warrant referred only to Ms. Bridgen's residence at the address, the police did not make the mistake of searching the second unit. No one's rights under s. 8 of the Charter were violated.
- [43] In the circumstances, I agree with the reviewing judge that this issue was a "distraction" from the main issue before the Court rather than an incident of deliberate misrepresentation or omission of a material fact on the part of the police. I would not accede to this ground of appeal.
- [44] Finally, Ms. Bridgen submits that the fact that no hand-to-hand transactions were ever observed during the ten days of surveillance was fatal to the utility of the surveillance evidence attached as an exhibit to the ITO. Similarly, it is said that the fact she returned to her home every day does not link her residence to drug trafficking when no exchange was actually observed.
- [45] Again, however, the law is clear that it was for the judge on the voir dire to determine how much weight was to be given to particular evidence. As the reviewing judge in this case observed, the interactions described by the surveilling officers were "more consistent with commerce than friendship" (at para. 61) and a "common sense approach to the whole of the unchallenged factual assertions" gave rise in his analysis to the reasonable and probable grounds necessary for the issuance of the warrant. (At para. 63.) I see no error in his analysis.

[46] In the result, I am not persuaded that the reviewing judge erred in upholding the validity of the search warrant in this case. It is therefore unnecessary to consider s. 24(2) of the Charter.

[47] I would dismiss the appeal.

"The Honourable Madam Justice Newbury"

I agree:

"The Honourable Mr. Justice Voith"

I agree:

"The Honourable Madam Justice Horsman"

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