

CANADA / JUDGMENT

R. v. Chan

2020 BCSC 776

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Supreme Court of British Columbia

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2020 BCSC 776 R. v. Chan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chan,

2020 BCSC 776

Date: 20200305

Docket: 27984

Registry: Vancouver

Regina

v.

Duke Yin Chan and Lawton Louis Ma

Before: The Honourable Mr. Justice A. Ross

Oral Reasons for Judgment

(Garofoli Hearing)

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V.L. de Jong

Place and Date of Trial/Hearing:

Vancouver, B.C.

February 3-7, 2020

Place and Date of Judgment:

Vancouver, B.C.

March 5, 2020

- [1] THE COURT: I will provide my ruling on the search warrants now. For the sake of expediency, I am providing these reasons orally. I reserve the right to edit these reasons for grammar, syntax, and completeness. The decision itself will not change.
- [2] Mr. Chan and Mr. Ma are charged with eight counts of possession of controlled substances for the purposes of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c.19 [CDSA]. Those charges are set out in Indictment # 27984-2.
- [3] Mr. Chan and Mr. Ma were arrested on February 3, 2017. On that date, the Vancouver Police Department ("VPD") executed a search warrant under the CDSA at several locations. The police searched two vehicles and subsequently a safety deposit box. The main portion of this application relates to the search of three apartment units located in buildings on Riverwalk Avenue, Crowley Drive, and Eldorado Mews. For the purpose of these reasons, I will not specify the unit numbers or street numbers of any of those buildings, but when I refer to each street, each of those defined terms will refer to the specific unit number addressed in the search warrant or the condominium in that building that was the target of the search. Where I am referencing the entire building, I have made that clear in these reasons.
- [4] The search warrant was issued on the basis of an omnibus Information To Obtain ("ITO") affirmed on February 2, 2017. The ITO related to six locations and ran more than 128 pages. In prior rulings, I made rulings relating to certain breaches of the Charter rights of the two accused. I found that some of the information contained in the ITO was obtained in breach of their Charter rights. The information derived from those breaches has been excised from the ITO.
- [5] This application relates to the sufficiency of the grounds for the issuance of the search warrant as amplified by the testimony of Detective Constable Nemeth and Detective Ginther, who testified at the voir dire. Mr. Chan and Mr. Ma argue that there were insufficient grounds for the issuance of the search warrant. They argue that there are faults on the face of the ITO, both in its original form and its excised form, following my rulings. Those faults, they argue, undermine the objective reasonableness of the issuance of the search warrant. As a result, they say the warrant should be ruled invalid. They further argue that once the search warrant is ruled invalid, the resulting searches were warrantless, and as such, were a

breach of the rights of Mr. Chan and Mr. Ma.

- [6] The arguments of counsel addressed general principles, legal and factual submissions relating to the ITO generally and finally the factual basis for the warrant to search each location. For the reasons set out below, I find the warrant to search the unit at the Eldorado and the two vehicles to be valid. I find the warrant to search the residences at Crowley and Riverwalk to be invalid. I further find that the subsequent warrant to search the safety deposit box was invalid.
- [7] I discuss below the general principles, followed by a discussion of the defence submissions on the ITO, then I set out my analysis of the evidence relating to each of the locations.

General principles

- [8] There is no dispute between the Crown and the two accused on the legal principles to be applied. The substantive arguments relate to the application of those principles.
- [9] Regarding the test for the issuance of a search warrant, both counsel point to *R. v. Liu*, 2014 BCCA 166:
- [39] I would summarize the main points from this jurisprudence in the following way:
- The trial judge's role in reviewing the validity of a search warrant is to consider whether the material filed in support of the warrant, as amplified on review, could support the issuance of the warrant.
 - The trial judge should examine the information in its totality, not on a piece meal basis, in a "practical, non-technical, and common sense basis".
 - The question is not whether the reviewing judge would have granted the order, but whether there was an objective basis on which the issuing justice could have done so.
 - The appropriate standard is one of "reasonable probability" rather than "proof beyond a reasonable doubt" or "prima facie case". The phrase "reasonable belief" also approximates the requisite standard.
 - Reasonable grounds may be said to exist at "the point at which credibly-based probability replaces suspicion".
- [10] Additional principles discussed in other cases include the following: evidence that was obtained in breach of the accused's Charter rights is automatically excised from the ITO; that step has been taken. The analysis by this Court must exclude erroneous information but may consider material properly received as "amplification" during the voir dire hearing (*R. v. Morelli*, 2010 SCC 8 at para. 41).
- [11] With respect to the instructions on the use of amplification evidence, the comments of Justice Riley in *R. v. Belanic*, 2019 BCSC 1411 are helpful:

- [65] Second, there is the concept of amplification as it is discussed in the case law, notably Araujo and Morelli. The law instructs that where evidence is elicited in cross-examination of the affiant, that evidence can be used by the defence to challenge the accuracy, credibility, or reliability of the averments in the ITO. The defence is thus permitted to use evidence elicited on the review hearing to undercut or undermine the grounds set out in the ITO. However, the law places strict limits on the circumstances in which the Crown can rely upon evidence adduced at the review hearing to correct or clarify the grounds in the ITO. The Crown can only rely on the principle of amplification to correct or clarify minor mistakes or good faith drafting errors: Araujo at paragraph. 59; Morelli at para. 41 to 42; R. v. Wilson, 2011 BCCA 252 at para. 68.
- [12] I discuss below the arguments regarding the amplification made by Mr. Chan and Mr. Ma with respect to Detective Ginther's and Detective Constable Nemeth's evidence.
- [13] Further considerations outlined by Justice Riley in Belanic include the rules against narrative and conclusory statements by the affiant in the ITO. Justice Riley discusses those considerations at paras. 12-14:
- [12] There is another important concept to be borne in mind when assessing the facial sufficiency of the grounds in an ITO. That concept is the rule against narrative, which underlies the requirement to properly source information set out in an ITO. It is aptly stated in Re: Criminal Code, [1997] O.J. No. 4393 (O.N.S.C.) at paragraph 8:

Firstly, and most importantly, any factual assertion by the applicant within the four corners of the affidavit must be sourced to some investigative resource. Otherwise, the applicant breaches what is sometimes referred to as the rule against narrative. It is insufficient for an applicant to simply state conclusions, opinions and facts without providing the court the source or origin for [those] conclusions, opinions or facts. The credibility and reliability of the assertions are inextricably linked to the investigative resources themselves.

- [13] As this passage suggests, the issuing justice must be furnished with information necessary to properly assess the credibility and reliability of the facts presented in the ITO. Although an affiant is permitted to rely on hearsay, he or she is expected to set out the source of any such hearsay averments so that the reader is able to properly evaluate the credibility and reliability of that source. For example, where the affiant states that he or she obtained information from the review of a police file without being more specific as to the originating source, this will often be problematic because it will not be possible to determine whether the particular factual assertion originated with a police observation, a witness statement, an informer tip, a citizen complaint, or some other source of information. Without knowing the source of the information, the reader cannot make any assessment of the credibility and reliability of the source, making it difficult or sometimes impossible to determine whether the information is capable of supporting a reasonable belief.

- [14] Another important concept is the rule against conclusory statements. As stated in *R. v. Sunner*, 2017 BCSC 2445 at para. 31, "[i]t is trite law that 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", citing *Restaurant Le Clémenceau Inc. v. Drouin*, [1987] 1 S.C.R. 706.
- [14] In this application, the two accused submit that, to the extent that narrative or conclusory language is included in the ITO, it should be ignored. They do not argue that the ITO fails because of any such language.
- [15] The decision in *Belanic* also confirms that the test to be applied in this application is that of a "reasonable probability":
- [8] The reasonable grounds standard does not require proof of a *prima facie* case, much less proof beyond a reasonable doubt. Rather, the reasonable grounds standard contemplates a credibly-based probability or reasonable probability. It has been described at the point at which suspicion gives way to credibly-based probability: *R. v. Vu*, 2011 BCCA 536 at para. 39, affirmed on this point, *R. v. Vu*, 2013 SCC 60 at para. 9 to 18; see also *R. v. Liu*, 2014 BCCA 166 at para. 37.
- [16] The role of the judge in reviewing the basis for the search warrant was described in *R. v. Scott*, 2012 BCCA 99 at para. 42 as follows:
- [42] decide whether on a "practical, non-technical, and common sense basis" the totality of the circumstances demonstrate reasonable grounds for the belief the appellant was committing the stated offences, and could support the issuance of a warrant:

That portion of *Scott* was quoted with approval in *Liu* at para. 35.

- [17] The second stage of the test asks whether the ITO provides a sufficient link to the searched location. As noted in *Liu*, *supra*, at para. 36, it is not sufficient that the individual under investigation is linked to drug activity or offences. There must be information that links the specific location to that alleged drug activity. The test was discussed in *R. v. Sunner*, 2017 BCSC 2445:
- [34] I have no difficulty concluding that the issuing justice could have been satisfied that drug offences had occurred. The direct evidence of a number of drug purchases by undercover operators is more than ample grounds to support such a conclusion. Also, the nature of the activity itself, its frequency, and the informer information indicating that this was part of a dial-a-dope business are all clearly capable of supporting an inference that the drug activity was occurring on an ongoing basis, involving ongoing possession of quantities of cocaine, heroin, and methamphetamine for the purpose of trafficking.

- [35] Clearly, a more contentious issue is whether the grounds were capable of satisfying the issuing justice that evidence of these drug offences would be found at the residence at 8815 116 Street. In this regard, it appears that the grounds fall into two overlapping categories. The first of these is grounds to believe that Mr. Sunner is involved in drug trafficking. The second is grounds to believe that drug trafficking activity is sufficiently linked to 8815 116 Street.
- [36] Again, I have no difficulty concluding that there was a basis on which the issuing justice could be satisfied that Mr. Sunner was involved in the drug activity under investigation. A person named Louie was implicated in a number of drug transactions and the informer information also made reference to Louie as a partner in the dial-a-dope line. The police determined through reliable means that Louie was Mr. Sunner.
- [37] The remaining question is whether the issuing justice could have been satisfied that the drug dealing activity was sufficiently linked to the residence at 8815 116 Street so as to give rise to a credibly-based probability that evidence of the offences would be located at that premise. On this issue, it seems to me that the grounds stood on two further overlapping planks.
- [18] In the discussion below, I have undertaken a practical, non-technical, and common sense approach to determine whether there were reasonable grounds to issue the search warrant for each of the locations.
- [19] The argument of the two accused falls into several categories. I will deal with each argument in order. I deal first with the general arguments made by both accused, then move onto the arguments regarding specific search locations.

Experience of the Affiant

- [20] The first area of argument for the two accused relates to the depth of the experience of the affiant in the ITO. The argument relates to the amplification of the ITO by the testimony of the affiant, Detective Ginther. The two accused argue that the police theory of the operation under investigation was that Mr. Chan and Mr. Ma were supplying drugs to street-level dealers, hence they were at least one step or level removed from those dealers. They submit that, in cross-examination, Detective Ginther conceded that he had no prior experience with the type of drug operation that formed the basis of the police theory. Instead, they argue, Detective Ginther had experience with street-level or "dial-a-dope" operations. He had not been involved in a drug investigation involving a "stash house".

- [21] Detective Ginther's lack of experience is relevant, they submit, because at several points in the ITO, he deposes that, in his experience, drug dealers of a certain type act in a certain way. Because he had no relevant experience, they argue, his statements have no value. An objective review of his statements would, they argue, not support the issuance of the search warrant. They rely on the decision of the Supreme Court of Canada in *Morelli*, specifically the comments at para. 73:
- [73] The main difficulty with these generalizations about certain "types of offenders" is that they are entirely devoid of meaningful factual support. The ITO contains no evidentiary material in this regard, even anecdotal, apart from the bald assertion of the two police officers. Furthermore, there is virtually nothing to describe, let alone establish, the expertise of the officers to whom the claims are attributed. The only information provided in the ITO consists in the officers' names, positions, and places of work. This is surely an insufficient evidentiary basis to enable a justice of the peace, hearing an application *ex parte*, to determine that the generalization is sufficiently credible or reliable to form the basis for a finding of reasonable and probable grounds.
- [22] In *Morelli*, the Court said that there needs to be some evidence of the background of the affiant to enable a justice of the peace to identify the basis of the opinions for the expertise that the person or persons has. In *Morelli*, the alleged offence related to the possession of child pornography. The affiant included information regarding the types of activities engaged in by this "type of offender". The Court criticized the ITO throughout the reasons, but put it succinctly at para. 4:
- [4] The ITO invoked an unsupported stereotype of an ill-defined "type of offender" and imputed that stereotype to the appellant. In addition, it presented a distorted portrait of the appellant and of his surroundings and conduct in his own home at the relevant time.
- [23] In this case, the two accused argue that the court has been informed of the lack of experience of Detective Ginther. Relying on *Morelli*, they say that his lack of experience is relevant for two reasons: first, he actually had no experience upon which he could base his statements about what he would expect this type of offender to do; and second, he did not inform the justice of the peace about his limited experience. Hence, the justice of the peace could have formed an inflated view of Detective Ginther's experience. To the extent that inflated view formed the basis of the issuance of the search warrant, there was no foundation for it.
- [24] Detective Ginther's statements tied to his experience touch on all areas of the search warrant; however, the two accused point to two particular examples.
- [25] First, they point to the evidence that Mr. Chan attended at an ATM immediately after a short "meet". Detective Ginther stated his belief in the ITO that this indicated Mr. Chan had received funds from a drug deal and was depositing those funds into an account by using an ATM. Counsel argues that this statement is the opposite of common sense. The implication of counsel's submission is that no drug dealer would use an ATM to deposit the proceeds of a

drug deal because those funds would be traceable. Further, there are limitations on the amounts that can be deposited in that manner.

- [26] Second, the two accused point to the information in the ITO relating to drug traffickers of a certain level using a "stash house" so as to avoid the use of their own residence for drug offences. Based on the reasoning in Morelli, they say that Detective Ginther cannot provide information on subjects on which he has no experience.
- [27] In response, the Crown argues, correctly in my opinion, that Detective Ginther's statements regarding his experience constitute statements of common sense and are in conformity with the evidence that had been obtained in the investigation. The Crown further argues that the correct lens through which I should view this application is also the "common sense" lens. The test is one of reasonable probability.
- [28] The Crown acknowledges that where any proposition in the ITO is unfounded, it cannot be supported by any statement by any person, including Detective Ginther. However, the Crown points to statements of Detective Ginther relating to the purpose of having a stash house. The Crown submits that his statements in this regard were based on common sense and conformed to the rest of the evidence collected by the police and included in the ITO.
- [29] The Crown submits that this is not a case, like Morelli, where Detective Ginther was invoking an unsupported stereotype of an ill-defined "type of offender". Instead, he was providing evidence of the methods used by drug dealers above the street level. They use "stash houses" to avoid having drugs at their residences. This is a matter that falls within the realm of common sense and, to an extent, common knowledge.
- [30] Further, as discussed in more detail below, Detective Ginther's statements conformed with all of the information that the police had assembled regarding the activities of Mr. Chan. I accept the Crown's argument on this point. While Detective Ginther lacked experience in investigating what were, in theory, higher-level drug trafficking organizations, I do not find that his lack of experience weakens the substance of the ITO. To be more specific, there are some statements in the ITO, such as the use of the ATM following a short meet, that do not stand scrutiny. However, those statements do not weaken the overall effect of the ITO. As noted above, other statements which are based on some amount of knowledge and some amount of common sense assist in providing context to the actions viewed by the police.
- [31] I do not find that the lack of experience of Detective Ginther weakens the ITO.

Fishing Expedition

- [32] The accused's second argument is that the ITO was, to some extent, a fishing expedition. In support of this argument, the two accused submit that this conclusion is evident from the nature of the items sought at the locations within the ITO. For example, with respect to the vehicles, the ITO suggests that there will be scales, money, drugs, score sheets, and other items in Mr. Chan's vehicles. Mr. Chan says that there is no reasonable objective support for

the concept that a higher level drug dealer, as theorized by the police, would be driving around with scales, cash, product, and score sheets. They say that this is evidence of the ITO being a fishing expedition.

- [33] Further, Mr. Chan argues that Detective Ginther's answers and responses to cross-examination questions regarding those items do not meet the requisite test for issuing a search warrant. When asked whether, in his opinion, it was likely that the scales and other drug-packaging materials would be found in Mr. Chan's vehicles, he responded that it "could be". Mr. Chan argues that that answer was not sufficient to meet the test.
- [34] In response, the Crown submits that it would be improper for Detective Ginther to state that he was certain or reasonably certain that those items would be found in the vehicles. Further, his answers on cross-examination, while properly considered as amplification, do not speak to the level of his knowledge base at the time he swore the ITO. The Crown argues that the factual basis for the searches is included in the ITO and it would not be a proper analysis to base the current decision on the language used by the officer during cross-examination. Put another way, the court cannot expect Detective Ginther to provide perfect answers during cross-examination that he had "reasonable grounds to believe that certain items would be found in the vehicles."
- [35] Further, with respect to the list of items to be searched at each location, the Crown argues that the reasoning in *R. v. Whitaker*, 2008 BCCA 174 applies and that the court is permitted to sever any unsupported portion of the ITO:
- [47] However, in light of the doctrine of severability discussed in *Re Regina and Johnson & Franklin Wholesale Distributors Ltd.* (1971), 3 C.C.C. (2d) 484 (B.C.C.A.), leave refused, [1971] S.C.R. ix, it does not follow that the warrant is invalid in all respects. In that case, an application for certiorari was brought to quash a search warrant which authorized the seizure of (1) "obscene books that are being kept for the purpose of distribution" and (2) "company records, including invoices, that are being kept". Mr. Justice Tysoe concluded that only the items in the first category were properly described. He went on to hold that "the bad part of the warrant is clearly severable from the good", and quashed only the part dealing with company records and invoices: 490, 491. Similarly, in *R. v. Grabowski*, [1985] 2 S.C.R. 434, Mr. Justice Chouinard severed an invalid clause in a wiretap authorization, leaving the balance of the order intact: 451 - 453.
- [36] On that basis, the Crown argues that as long as part of the ITO relating to the location being searched can be supported on the applicable tests, the other overreaching elements can be severed.
- [37] Having considered the law and submissions, I find that the search warrants do not constitute a fishing expedition. It is clear that the police included a variety of information to be searched at each location and there is substantial overlap between those items in each of the locations. However, I do not find that this overlap diminishes the reliability or reasonableness of the ITO overall. If the ITO provides an appropriate basis for establishing

that the offences are being committed or will be committed and there is a sufficient link to the location, then it is not unreasonable for the police to include all items related to those alleged offences that they have reasonable grounds to believe will be at the location. To the extent that such paragraphs overstep, they can be severed.

CDSA versus Criminal Code Search Warrant

[38] The Crown made submissions that a search warrant issued under the CDSA, s. 11 has wider scope than a warrant issued under the applicable section of the Criminal Code, R.S.C. 1985, c. C-46. The Crown notes that there is an additional subparagraph in the CDSA provision relating to obtaining evidence of a drug offence. I note that the decision of Riley J. in *Belanic* at para. 7 indicates that the two types of warrants are equivalent. As such, I find no difference between the two types of warrants.

Evidence Supporting the Search Warrant

[39] The discussion above deals with the arguments of the two accused relating to the excisions and amplification of the evidence supporting the ITO. I will now move on to discuss the information and evidence that form the basis of the search warrants.

[40] As noted, the two accused argue that the ITO fails on at least two grounds. First, they argue that there was no evidence to support the allegation that they were involved in drug offences. Second, they argue that there was no link to the locations searched. In the language of Liu, they say that there was nothing "more" to link the locations.

[41] In my earlier rulings, I made findings relating to certain Charter breaches. Based on those rulings, certain information in the ITO was excised.

[42] The Crown and the two accused provided a point-form document containing the information that remains in the ITO (i.e., the information that was not excluded). There is substantial agreement between the positions taken by the two accused and the Crown in this regard. I have set out below the facts that were available to a justice of the peace in issuing the search warrant following excision and amplification:

i At some point in late 2019, police received informant information that a person named Mr. Salamacha was involved in the sale of fentanyl and other drugs.

ii On January 7, 2017, Mr. Chan was observed meeting with Mr. Salamacha in the lane behind 2633 E. 2nd Ave. in Vancouver. Mr. Chan stopped beside the front driver's side door of Mr. Salamacha's vehicle. No one was seen holding anything, and no exchange was observed. Mr. Chan was then observed attending at a bank, then a liquor store, and returning to his residence at 3162 Riverwalk Ave.

iii On January 10, 2017, Mr. Chan was observed at Riverwalk and seen attending to errands with his wife and child.

iv On January 13, 2017, the VPD had the Riverwalk complex under surveillance. Mr. Chan was observed leaving Riverwalk and followed to Crowley. He picked up an individual, and the two went out for lunch. Mr. Chan dropped the individual back at Crowley before returning to Riverwalk. Detective Taguam queried several police systems and learned that Mr. Ma was a potential associate of Mr. Chan. Upon checking Mr. Ma's driver's license, Detective Taguam discovered that Mr. Ma's residential address was at the Crowley building. By this method, the police identified Mr. Ma.

v On January 14, 2017, Mr. Chan attended at Eldorado for 12 minutes driving the CRV vehicle. Fob records indicate that Mr. Chan used fob #335.

vi After he departed Eldorado, the police stopped Mr. Chan for speeding. He provided his driver's licence and confirmed his address at Riverwalk.

vii On the same day, Mr. Chan then had a brief meeting with Mr. Salamacha in the parking lot of a supermarket at 2800 E. 1st Ave. Mr. Chan sat in the front passenger seat of Mr. Salamacha's vehicle for three minutes. No one was seen holding anything, and no exchange was observed

viii Also on January 14, 2017, Mr. Chan was observed to have another brief meeting, this time with an unknown female, at a Maple leaf storage facility in West Vancouver. No one was seen holding anything, and no exchange was observed. He was then seen attending a bank ATM and a restaurant.

ix The following information was provided by the building manager at Eldorado:

- (1) Mr. Chan was identified by the building manager as a long-term resident of the Eldorado
- (2) Mr. Chan was listed as an occupant of a suite on the fifth floor.
- (3) Mr. Chan accessed Suite 520 on January 14, 2017, by using fob #335.
- (4) There were a total of four fobs assigned to suite 520, all assigned to Ms. Amy Tran.

x On January 16, 2017, Mr. Chan left his residence at Riverwalk, made a brief stop at a residence on Garden Dr. in Vancouver, and then attended at a real estate development company.

xi Also on January 16, 2017, Mr. Chan attended at the Eldorado for seven minutes before leaving and having a brief meeting with an unknown female at Oak Ridge Mall. No transaction was observed.

xii Later on January 16, 2017, Mr. Chan re-attended at Eldorado for four minutes. He was seen carrying a small cardboard box into the building but not seen carrying anything as he exited. He then had a brief meeting with an unknown male in parking lot of a Tim Hortons location on Main St. in North Vancouver. No transaction was observed.

xiii Mr. Chan was then seen exiting a residence at 4575 Valley Rd. in North Vancouver. He was not seen carrying anything.

xiv Later on January 16, 2017, Mr. Chan travelled to a Kripps pharmacy in Kerrisdale. He was observed carrying a white plastic shopping bag containing a white powder weighing between two and five pounds. Detective Constable Nemeth interviewed the clerk at the Kripps pharmacy and was advised that Mr. Chan had purchased Mannitol at that location on numerous occasions. Mannitol is a known cutting agent. I discuss below the evidence regarding this activity and whether it happened on January 16 or 23, 2017.

xv On January 18, 2017, the building manager at Eldorado showed Detective Constable Nemeth an "entry phone form" indicating that, as of 2014, the owner of the suite was Amy Tran and the occupant was "Duke Tran". The police were aware that Mr. Chan had changed his last name from Tran to Chan.

xvi Also on January 18, 2017, the building manager at Eldorado showed that the fob associated to Mr. Chan (fob #335) was used almost every day for brief intervals between December 12, 2016, and January 15, 2017.

xvii On January 20, 2017 Mr. Chan had a brief meeting with Mr. Salamacha in a parking lot at 2800 E. 1st Ave. in Vancouver. No transaction was observed. Approximately four hours later undercover officers purchased fentanyl mixed with caffeine from Mr. Salamacha.

xviii On January 23, 2017, Mr. Chan was reportedly observed purchasing mannitol from Kripps pharmacy and taking it to Riverwalk.

xix On January 27, 2017, the police physically surveilled Mr. Chan's other vehicle, a Toyota RAV4, and followed it first to Crowley where he picked up Mr. Ma at 1:32 p.m. and travelled to Eldorado at 1:39 p.m. Six minutes later, the two men left Eldorado, and Mr. Chan dropped Mr. Ma at Crowley. Mr. Ma exited, holding a bag of potato chips.

xx Also on January 27, 2017, the tracker records indicate that the vehicle was observed at Eldorado. After 33 minutes, Mr. Chan left the building.

xxi On January 30, 2017, Detective Ginther discovered that the owner of Eldorado was Amy Tran, who is believed to be the sister of the accused, Duke Chan.

xxii On January 31, 2017, data from the tracking devices installed on Mr. Chan's vehicles showed 15 attendances by the CRV to Eldorado between January 20 and 31. The RAV4 attended twice during that same timeframe. The CRV attended Mr. Salamacha's residence on five occasions and the RAV4 attended once between January 20 and 27, 2017.

xxiii On January 31, 2017, Mr. Chan was observed in the company of an unknown individual reaching into the centre console of the CRV and walking to the parkade of a supermarket. He was not observed to be carrying anything. He met briefly with Mr. Salamacha in Mr. Salamacha's vehicle. In that observation, no one was seen holding anything and no exchange was observed

xxiv On February 1, 2017, at 11:27 a.m., the CRV was parked outside 2633 E. 2nd Ave. which was known to be Mr. Salamacha's residence. At 11:34 a.m., Mr. Chan was observed leaving the area in the CRV.

[43] Containing that information, the ITO was affirmed on February 2, and the search warrant was obtained the same day. The VPD executed the search warrant on February 3. As discussed below, the Crown argues that in the facts above, there was reliable evidence, when viewed in its totality, which formed a reasonable basis to issue the search warrant for each location.

Evidence of Drug Offences

[44] Mr. Chan and Mr. Ma argue that there was no, or no sufficient, evidence that they were involved in drug offences. Hence, they argue the search warrant under the CDSA should fail on the first part of the test. They say there was no reasonable grounds to believe that drug offences had been committed or would be committed.

[45] In this portion of the argument, the two accused take slightly different positions. Mr. Ma points out that there is less evidence tying him to any alleged drug activity.

[46] Mr. Chan argues that although he was linked to the purchase of mannitol, which is a known suspected cutting agent, when the police made an undercover "buy" from Mr. Salamacha, the fentanyl purchased was cut with caffeine. Hence, he argues that the mannitol purchase did not conform to the other information obtained by police. Mr. Chan further argues that there is limited information linking him to any criminal offence or other offenders.

[47] The Crown points to the following information in the ITO with respect to Mr. Chan:

- a) The police suspected that Mr. Salamacha was trafficking in cocaine and fentanyl and they had him under investigation:
- b) On January 20, Mr. Chan had a brief meeting with Mr. Salamacha in a parking lot on East 1st Avenue. No transaction was observed.
- c) Mr. Salamacha was involved in the sale of fentanyl to an undercover officer. This sale occurred approximately four hours after Mr. Salamacha's meeting with Mr. Chan on January 20.
- d) During the period of the investigation, the police observed Mr. Chan meet with Salamacha five times in January and February 2017.
- e) Between January 20 and 27, the tracker on Mr. Chan's vehicles indicated that those two vehicles travelled to Mr. Salamacha's residence on six occasions, which are distinct from the five other meetings discussed above.
- f) Police observed Mr. Chan having brief meets with unknown individuals on four occasions: January 14, 16, and 31, there were two meetings on the January 16.

- g) On January 16, Detective Constable Nemeth observed Mr. Chan leaving Kripps Pharmacy in Kerrisdale. Detective Constable Nemeth then spoke to the clerk and learned that Mr. Chan had purchased mannitol at that pharmacy. Mannitol is a known cutting agent for drugs. I note that because of the poor note taking of Detective Constable Nemeth, there is some dispute on the date of this event. The ITO indicates that some version of these events occurred on January 16 and January 23. However, Detective Constable Nemeth's notes appear in his notebook only on January 16. The Crown argues, and I accept, that the distinction between these two dates does not matter a great deal because we are assessing the facts on whether there was a reasonable basis for the ITO. It is not seriously disputed that on one of the two dates, January 16 or January 23, these events occurred. I find that they occurred on the January 16 and January 23. That finding is significant for the search of Mr. Chan's residence at Riverwalk, which is discussed below.
- [48] In addition, as discussed in more detail below, the police had information linking Mr. Chan to the condominium at Eldorado. Mr. Chan visited that building on a number of occasions with each visit being relatively brief. Those visits are set out in the agreed facts between Crown and the two accused. Mr. Chan was also seen associating with Mr. Ma, who had a criminal record relating to drug activity.
- [49] Given Mr. Salamacha's known involvement with drug transactions and Mr. Chan's multiple meetings with Mr. Salamacha in vehicles for short periods of time, those meetings defy any logical conclusion other than Mr. Chan's involvement in drug transactions. Further, the short meets with unidentified individuals in the context of meetings with Mr. Salamacha provide further information establishing the reasonableness of the officer's belief.
- [50] The purchase of large amounts of mannitol also defies explanation, except in relation to use as a cutting agent for drug transactions. Finally, Mr. Chan's association with Mr. Ma who had prior convictions for trafficking in controlled substances was, in my opinion, telling.
- [51] I find that, taking all of this evidence in context, the information in the possession of the police was sufficient to form the basis of a reasonable belief that Mr. Chan was involved in drug offences.
- [52] Mr. Ma's argument, as discussed above, is that there was insufficient evidence about him to form a reasonable belief that he was involved in drug offences. The Crown points to the following information in the ITO with respect to the basis for belief that Mr. Ma was involved in drug offences:
- a) Mr. Ma has an indefinite firearms prohibition stemming from prior convictions.
 - b) Mr. Ma was convicted in 2001 of possession of scheduled substances for the purpose of trafficking, two counts, and possession of the proceeds of crime.
 - c) Mr. Ma was convicted in 2006 for carrying a concealed weapon.
 - d) Mr. Ma was convicted in 2007 for possession of a scheduled substance.

- e) Mr. Ma was seen with Mr. Chan. Mr. Chan picked up Mr. Ma at his residence at Crowley on January 13, 2017, and the two men went for lunch.
 - f) Mr. Chan drove Mr. Ma to the Eldorado building on January 27, 2017, and the two men were in the building for six minutes. As discussed above, the suite in the Eldorado building was suspected to be a stash house for drugs.
- [53] The Crown says that the link between Mr. Chan and Mr. Ma, in the context of all of the circumstances, provides reasonable grounds to believe that Mr. Ma had committed drug offences. In particular, the Crown notes that the police had strong information based on the multiple meetings between Mr. Chan and Mr. Salamacha. Further, Mr. Chan's activities, making short visits to Eldorado on almost a daily basis, provided reasonable grounds for the police to believe that Eldorado was being used as a stash house. In this regard, the Crown points to the short visit that Mr. Chan and Mr. Ma made to the Eldorado on January 27. Given the other facts known to police, the fact that Mr. Ma with his prior offences and his relationship with Mr. Chan, at least to a reasonable probability, indicates sufficient grounds for a reasonable belief that Mr. Ma was involved with Mr. Chan in committing drug offences.
- [54] I agree with the Crown's submission on this issue. I find that the information outlined above could form the basis of a reasonable belief that Mr. Ma was involved in drug offences. That level of belief is sufficient for the issuance of the search warrant relating to Mr. Ma.
- [55] On that basis, I find that there were grounds for a reasonable belief that Mr. Chan and Mr. Ma were involved in drug transactions.
- [56] I now turn to the evidence supporting the search of each of the locations. As noted above, in the decisions in Liu and Sunner, the fact that a person is thought to be involved in drug trafficking is not sufficient on its own to form the basis to search their residence. As stated in Sunner, something "more" is required to give rise to a credibly-based probability that evidence of the offences would be located in that premise.

Eldorado

- [57] With respect to the search of Eldorado, the two accused argue that there was no proper evidentiary foundation to issue the search warrant. They say that there are only observations of Mr. Chan attending at that location and also attending at several short meets with other people. They further argue that a personal residence should be afforded the highest level of protection from unlawful search and seizure.
- [58] They note that nobody was ever observed carrying any packages or making any exchanges during any of the meetings observed by police. There was no pattern of attendances at Eldorado that would suggest that the unit was being used as a stash house to supply drugs. Mr. Chan did not attend Eldorado immediately before each meeting with Mr. Salamacha. The two accused argue that there is no pattern that would indicate that Mr. Chan attended Eldorado for drug transactions. They note that the police had tracking data from Mr. Chan's

vehicles. That data did not indicate Mr. Chan attending Eldorado before meeting Mr. Salamacha or the other short meets. On this basis, they argue that there was insufficient evidence to establish either that he was involved in drug transactions or that the unit in Eldorado was linked to any such operation.

- [59] In response, the Crown focuses on the following information in the ITO, in addition to the information discussed above relating to the grounds for belief that drug offences were being committed:
- a) Mr. Chan had two residences.
 - b) Mr. Chan was known to have a fob, # 335, which provided access to the garage, elevator, and suspected stash suite on the fifth floor. Under surveillance, police observed Mr. Chan attend at the Eldorado building in six occasions between January 5 and January 27, with two visits on January 27.
 - c) Reviewing the fob records of the building, the police determined that Fob # 335 was used to access the Eldorado suite almost daily between December 12, 2016, and January 15, 2017.
 - d) Mr. Chan's attendances at the Eldorado building were for short periods of time. Mr. Chan attended at the Eldorado building with Mr. Ma on January 5, 2017.
- [60] The Crown says that Mr. Chan's multiple attendances at the Eldorado building and suite constitute a linkage between that residence and drug trafficking activity. The Crown argues that Detective Ginther's statements regarding the use of a stash house, which I discussed above, conform with Mr. Chan's multiple visits to the Eldorado.
- [61] My role, as set out above, is to review the entirety of the evidence and determine whether there were reasonable grounds in the excised ITO, after amplification, to issue the search warrant for the unit at the Eldorado. I find that there are sufficient grounds to search that suite.
- [62] Viewing the totality of the circumstances, the cumulative effect of the information provides the necessary grounds for a reasonable belief that the Eldorado was being used as a stash house. Hence, a justice of the peace could issue the warrant on the information in the excised ITO after amplification.
- [63] I note that Mr. Salamacha was first suspected and then confirmed to be selling fentanyl and cocaine. The police were entitled to assume that somebody was supplying him with the product that he was selling and investigate any links thereto. In that light, the activities of Mr. Chan, including the numerous short meets with Mr. Salamacha in or around his vehicle, do not have any other reasonable explanation. Seen from another viewpoint, it was reasonable to view those meetings as probable drug transactions. These activities raise Mr. Chan's activities at the Eldorado above suspicion and into the realm of reasonable belief.

- [64] In their investigation, the police noted Mr. Chan's purchase of a bag of mannitol at a pharmacy. That activity is highly suggestive of involvement in drug offences. The police had identified that Mr. Chan was a tenant in the Eldorado building. He had access to the suite by Fob #335. The police were also aware that he had another residence where he lived with his wife and young child. Fob records indicated that he was accessing Eldorado only during daytime hours. The tracking records indicated that he attended on multiple occasions, almost daily, and those visits were of short duration.
- [65] In this context, Mr. Chan's multiple attendances at Eldorado, when linked with his other activities, indicate reasonable grounds to believe that he was using the unit as a stash house. Again, no other reasonable explanation for these multiple attendances jumps to mind. Put in the context of the other facts in the ITO, the multiple short attendances at Eldorado, when Mr. Chan had another residence, lead to the reasonable belief that Eldorado was being used as a stash house. I find that the search warrant for Eldorado is valid.

Riverwalk

- [66] Putting the same considerations into play for Mr. Chan's residence at Riverwalk, I find that there are no reasonable grounds to believe that the residence at Riverwalk was linked to any involvement Mr. Chan may have had in drug-related transactions. It is clear that the police were aware that Mr. Chan lived at Riverwalk with his wife and young child. He was observed driving from Riverwalk, and also his vehicles were tracked from that location.
- [67] However, there was only one incident where Mr. Chan drove from his residence directly to any sort of "meet". That incident occurred on January 16, 2017, when Mr. Chan left his residence at Riverwalk and made a brief stop at a residence on Garden Drive in Vancouver. Following that short meeting, he then attended at the office of a real estate development company. There was nothing in those two meets that indicated any potential drug activity.
- [68] I noted above the evidence regarding Mr. Chan's attendance at Kripps Pharmacy. I found that that incident occurred on January 16 and not January 23. The importance of that distinction is that the police evidence indicated that on January 23, Mr. Chan drove directly from Kripps Pharmacy to his residence on Riverwalk. Since I found that that event occurred on January 16, there is no evidence that Mr. Chan took any drug-related materials to his home, because it did not occur during the surveillance on January 23.
- [69] Although the Crown argues that it is reasonable to expect that there would be evidence of drug offences at Mr. Chan's residence, I find that there is not sufficient information to ground a search warrant of his residence. For the reasons set out above, I find the search warrant in respect of Mr. Chan's residence is invalid.

Crowley

- [70] The evidence in the possession of the police with respect to Mr. Ma's residence on Crowley is even less than the evidence relating to Mr. Chan's residence. Although the police identified Mr. Ma's identity and confirmed that he resided at Crowley, the only evidence regarding that address was that Mr. Chan picked him up there on two occasions.
- [71] For the reasons set out above, I find that the search warrant in respect of Mr. Ma's residence on Crowley is invalid.

Vehicles

- [72] The Crown did not make submissions on the search of the two vehicles and, as I understand it, will not be seeking to submit any evidence at trial that was found in the two vehicles. The defence, on the other hand, argues that there were insufficient grounds to search the two vehicles.
- [73] I note that Mr. Chan was driving vehicles back and forth to Eldorado, and also drove to the meets with Mr. Salamacha and the other short meets. In my opinion, it is reasonable to assume that those vehicles may have been used in transporting drugs or drug paraphernalia. I find there were reasonable grounds to believe that there would be evidence of the drug offences in the vehicles. Those warrants are valid.

Safety Deposit Box

- [74] When searching Mr. Chan's residence on Riverwalk, the police found a receipt and key for a safety deposit box. Based on the other evidence located at Eldorado and at Riverwalk, police sought a second search warrant for the safety deposit box. There is no information or evidence gathered in the investigation that suggests that Mr. Chan was attending at the bank to access the safety deposit box during the course of drug-related activity. It appears that the police concluded that there may be relevant evidence in the box.
- [75] It follows from my decision on Mr. Chan's residence at Riverwalk that the subsequent search of his safety deposit box was also unlawful. The police could not have found the safety deposit box if they did not search the Crowley residence. For that reason, I find the search of the safety deposit box to be invalid.
- [76] That concludes my reasons.

"A. Ross J."

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