

CANADA / JUDGMENT

R. v. Coghill

2024 BCSC 137

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2024 BCSC 137 R. v. Coghill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Coghill,

2024 BCSC 137

Date: 20240123

Docket: 56221

Registry: Vernon

Rex

v.

Edward Scott Coghill and Stewart Wayne Tkachuk

Before: The Honourable Mr. Justice Gibb-Carsley

Oral Ruling on Voir Dire re Facial Validity Challenge

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Place and Date Hearing:

Vernon, B.C.

December 13, 2023

Place and Date of Judgment:

Vernon, B.C.

January 23, 2024

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I. Introduction

- [1] The accused, Edward Scott Coghill and Stewart Wayne Tkachuk, are charged with various offences related to an alleged violent home invasion and assault that occurred in Lumby, British Columbia late in the evening of September 17, 2019 and the early morning hours of September 18, 2019 (the "Offences").
- [2] As I will describe in more detail below, two males broke into a house occupied by James Jurica and Candice Kado, sprayed Mr. Jurica with mace, shot him with a shotgun loaded with non-lethal rubber shot and then beat him. The men then held Mr. Jurica and Ms. Kado captive while they stole items from the house. Both Mr. Jurica and Ms. Kado were injured during the home invasion. Mr. Jurica suffered injuries from the shotgun blast and from being beaten and Ms. Kado was injured by stray shot from the shotgun. As I will describe below, the police believe they have DNA evidence that links Mr. Tkachuk to the Offences.
- [3] In this voir dire, Mr. Coghill challenges the facial validity of an information to obtain ("ITO") dated March 25, 2020 (the "First ITO"), that was filed in support of an application for a general warrant pursuant to s. 487.01 of the Criminal Code, R.S.C., 1985, c. C-46 [Code] (the "First General Warrant") and production orders pursuant to s. 487.014(2) of the Code (the "Production Orders"). The First General Warrant authorized the police to seize shoes and jeans belonging to Mr. Coghill that contained stains from Mr. Coghill's blood (the "Clothing"). The Clothing has been in the possession of the police at the Vernon Royal Canadian Mounted Police ("RCMP") detachment since 2017, when it was obtained during an unrelated police investigation in which Mr. Coghill was the victim of an alleged beating. The police believe that the Clothing will contain a sample of Mr. Coghill's DNA which they wish to compare to unidentified DNA found on a hooded sweatshirt that they believe was worn by Mr. Coghill during the Offences, thus providing information concerning the Offences.
- [4] The Production Orders issued under the First ITO required various phone carriers to produce telephone records from a phone thought to be associated to Mr. Coghill and a phone thought to be associated to Mr. Tkachuk's girlfriend, Nichole Watson. The police believe the information related to the phones will afford evidence of the commission of the Offences as it will provide subscriber information and activation dates as well as it will provide information towards who had care and control of the phones around the time of the Offences, specifically from September 11, 2019 to September 25, 2019. Police also believe this information will assist in identifying witnesses and additional parties to the Offences.
- [5] Mr. Coghill contends that the First ITO does not provide reasonable grounds to believe that Mr. Coghill was involved in the Offences. He asserts that the First ITO fails to provide sufficient objective grounds to justify that the materials sought in the First General Warrant and Production Orders will provide evidence of the Offences. More specifically, Mr. Coghill argues that the First ITO contains hearsay and double hearsay, and relies on speculation to support Mr. Coghill's connection with Mr. Tkachuk and Mr. Coghill's involvement in the Offences.

- [6] Further, Mr. Coghill contends that Cst. Tyler Jackson, the affiant of the First ITO, provides unsourced expert opinion evidence regarding how cellular telephones utilize cellular transmission towers in an attempt to link the phone associated with Mr. Coghill to the location of the Offences. Mr. Coghill submits that, without requisite expertise or a source of his knowledge, Cst. Jackson's evidence regarding the manner in which the cell phones utilize transmission towers does not provide reasonable grounds to believe that Mr. Coghill was involved in the Offences or that evidence from the phones will afford evidence of the Offences' commission.
- [7] Given these shortcomings in the First ITO, Mr. Coghill argues that the First General Warrant and the Production Orders should be quashed and the evidence obtained through them be excluded from the proceeding. He also contends that if the First General Warrant is quashed, then the Clothing was seized in a warrantless search and should not be admitted in the proceedings under s. 24(2) of the Charter. In this regard, he asserts that the admission of the Clothing as evidence in the proceedings, if its search was unjustified, would bring the administration of justice into disrepute.
- [8] The Crown contends that the First ITO provides reasonable grounds to believe that Mr. Coghill was involved in the Offences, and that the seizure and DNA analysis of the Clothing and obtaining the production from the telecommunications companies meets the standard of credibly-based probability that the materials will afford evidence of the Offences. The Crown argues that the Court must consider the First ITO in totality, rather than focusing on the information in a piecemeal fashion. The Crown submits that when all of the information in the First ITO is reviewed in totality, it supports a finding that the First General Warrant and the Production Orders could have been issued. In the alternative, the Crown argues that, even if the Clothing was seized without a valid warrant, the Clothing should not be excluded from the proceedings pursuant to s. 24(2) of the Charter. In this regard, the Crown asserts that any breach of Mr. Coghill's expectation of privacy in the Clothing is minor given the Clothing was not claimed by Mr. Coghill from the police for a number of years. Further, the Crown submits that because the Offences are violent and extremely serious, the public has a significant interest that the matter be tried on its merits.
- [9] Mr. Coghill also challenges a DNA warrant and second general warrant (the "Second General Warrant") issued as a result of an ITO signed May 7, 2020 (the "Second ITO"). The Second ITO contains much of the information from the First ITO, and Mr. Coghill reiterates his argument that it provides insufficient grounds. However, he also argues that any information in the Second ITO that derives from materials seized in relation to the First ITO must be excised. He contends that after excision, the Second ITO cannot support the Second General Warrant or the DNA warrant.

- [10] The heart of this application is whether the First ITO meets the standard of credibly-based probability in establishing a reasonable probability or reasonable belief that Mr. Coghill was involved in the Offences. More specifically, does the First ITO provide reasonable grounds to believe that Mr. Coghill had sufficient connection to Mr. Tkachuk in general and that a phone associated with Mr. Coghill was used in physical and temporal proximity to the Offences to contact a telephone that police assert is connected to Mr. Tkachuk?
- [11] Courts are clear that on a challenge to the facial validity of a warrant, I must consider whether the totality of the information in the First ITO is sufficient to provide that there are reasonable grounds to believe that the requirements for the First General Warrant and Production Orders could have been granted. Sufficient grounds to meet this test have been described by our Court of Appeal as determining the "point at which credibly-based probability replaces suspicion" and requires a "practical, non-technical, and common-sense assessment of the totality of the circumstances": *R. v. Vu*, 2011 BCCA 536 at para. 39 [Vu BCCA], aff'd on this point 2013 SCC 60 at paras. 9--18 [Vu SCC].
- [12] A judicially authorized warrant is presumptively valid, lawful and therefore reasonable: *R. v. Wise*, 2020 ONSC 7716 at para. 43; *R. v. Wilson*, 2011 BCCA 252 at para. 63. As such, on this application, Mr. Coghill bears the onus of establishing, on a balance of probabilities, that the First ITO upon which the First General Warrant and the Production Orders were issued was insufficient: *Wilson* at para. 63.
- [13] In these reasons for judgment I will first provide a brief background of the Offences. I will then provide the legal framework applicable to facial validity challenges. I will then provide my analysis of the substance of the First ITO to determine if it contains sufficient credibly-based grounds to support a finding that the First General Warrant and Production Orders challenged by Mr. Coghill could have issued.
- [14] Before embarking further on these reasons, I note that Mr. Tkachuk's counsel, Ms. Mastop, was present at the voir dire, but takes no position on this application. I also note that in this case there appears no dispute that the Offences were committed. Rather, it is the identity of the perpetrators that is at issue. As such, in these reasons, I will refer to the events of September 17 and 18, 2019, as the Offences as opposed to alleged offences.

II. Background Facts

A. The Offences

- [15] In the early morning hours of September 18, 2019, at approximately midnight, two masked males armed with shotguns entered a dwelling house located at 6-380 Dure Meadow Road, Lumby, British Columbia (the "Crime Scene" or "Dure Property"). I will refer to these two males as "Male 1" and "Male 2" and collectively as the "Two Males". The house is a large house in a rural area outside Lumby, British Columbia and was occupied by James Jurica and Candice Kado. The Dure Property was being used to grow cannabis and Mr. Jurica was renting the residence.

- [16] When the Two Males entered the master bedroom, a physical altercation ensued between Mr. Jurica, Ms. Kado and the Two Males. Mr. Jurica was shot in the chest and buttocks with rubber shotgun slugs. He was then struck with a metal baton or baseball bat. Ms. Kado was shot in the chin with a birdshot pellet. Ms. Kado struck Male 1 in the head with a baseball bat, which she described as being a significant strike that would cause some injury to Male 1.
- [17] After being struck in the head, Male 1 removed his face coverings and was moving around the residence. Ms. Kado was able to provide some evidence about the person's appearance but could not make any positive identification. Male 2 was fully masked during the entire encounter.
- [18] After the initial assaults, the Two Males bound Mr. Jurica's and Ms. Kado's arms and legs with electrical zap straps. Once subdued, Mr. Jurica and Ms. Kado were held at gunpoint by one male, while the other ransacked the house. At one stage, Ms. Kado was escorted at gunpoint to a safe in the residence and ordered to open it. Several items were stolen from inside the residence, and when the Two Males left the residence, Mr. Jurica and Ms. Kado heard Mr. Jurica's Dodge Ram truck (the "Truck") start up and leave.
- [19] Once the Two Males departed, Mr. Jurica called a friend, Garrett Martindale, to discuss the attack. As the call is relevant to the grounds set out in the First ITO, I will describe it in more detail in my analysis.
- [20] Ms. Kado drove Mr. Jurica to Vernon Jubilee Hospital (the "Hospital"). Mr. Jurica was dropped off in the parking lot and walked into emergency unassisted, but once medical staff became aware that Mr. Jurica was suffering from firearm-related wounds, police were called just after 2:00 am on September 18, 2019.
- [21] At 2:33 am, police attended the Hospital and noted the injuries to Mr. Jurica were consistent with a serious assault. Mr. Jurica gave an initial statement to the police that was later determined to be untrue.
- [22] At 3:50 am, police located Ms. Kado at her residence in Vernon. She gave a similar account to what Mr. Jurica told police. It was later determined that Ms. Kado's account was untrue.
- [23] At 5:05 am, police located the Truck abandoned on Highway 6, less than one kilometre from where Dure Meadows Road meets Highway 6. Police took photos of the Truck at the roadside, and it was seized and towed to Vernon for further investigation.
- [24] In the afternoon of September 18, 2019, police attended the Dure Property and observed through the windows of the residence that there appeared to be a disturbance inside, with blood drops and a shotgun shell on the floor. Police entered the house to confirm if there were any other victims inside and, in plain view, observed more blood, zap straps on the floor, as well as holes in the wall consistent with a birdshot discharge of a firearm. No injured individuals were located and police secured the residence.

[25] On September 19, 2019, police re-interviewed Mr. Jurica and Ms. Kado. Mr. Jurica and Ms. Kado revised the story that they initially told police and described a home invasion robbery by two masked men armed with shotguns. They described what the men were wearing, but neither could identify the males from their voices, and both men were masked during the encounter. Ms. Kado provided some description of Male 1 who she had struck with a baseball bat and had observed without his mask. She described him as Caucasian, approximately 5 feet 7 inches tall, pock marked skin, light-coloured eyes, and dirty blonde hair. Neither Mr. Jurica or Ms. Kado recognized either of the Two Males. Ms. Kado gave a more limited description of Male 2 and described him as being shorter than Male 1, with brown eyes, and wearing camouflage clothing and a gas mask with grey filters.

B. The ITOs

[26] The First ITO was prepared by Cst. Jackson of the RCMP. Constable Jackson has been a police officer with the RCMP since 2009 and since May 2018 has been in the Okanagan RCMP General Investigative Section. The First ITO is 67 pages in length and provides details of the Offences.

[27] The First ITO seeks the following judicial authorizations:

- a) A Production Order for Chatr Mobile Telephone Number 250-307-5187 (associated with Mr. Coghill). I note that the First ITO sets out that Chatr Mobile is a subsidiary of Rogers Communications Inc.;
- b) A Production Order for Telus Communications Inc. Telephone Number 250-306-3504 (Associated to Nichole Watson); and
- c) A General Warrant to covertly seize Mr. Coghill's bloody clothing from the exhibit room at the Vernon RCMP detachment.

[28] In respect of the Production Orders, the First ITO specifically seeks the following information for the two cell phones:

- a) the subscriber name, user name, address and activation date;
- b) records of incoming and outgoing telephone calls and text messages from September 11, 2019 to September 25, 2019;
- c) sector information and tower locations used to transmit all incoming and outgoing telephone calls and texts from September 11, 2019 to September 25, 2019;
- d) the International Mobile Equipment Identifier Number (IMEI); and
- e) subscriber name and user name and address for any telephone number that was in contact with these phones from September 11, 2019 to September 25, 2019.

- [29] The First ITO was also used in support of an application for a non-disclosure order and a sealing order.
- [30] I will provide more details of the specific information contained in the First ITO in my analysis below. However, as context, I note that the First ITO focuses largely on what investigators believe is information that establishes a connection between Mr. Coghill and Mr. Tkachuk. The First ITO also sets out information obtained from cellular telephone transmission towers in Lumby, British Columbia that police say demonstrates that a phone associated to Mr. Coghill was near the Crime Scene on the night of the Offences. Put simply, the First ITO attempts to provide information that links Mr. Coghill with Mr. Tkachuk generally. The First ITO also attempts to provide information that links Mr. Coghill with Mr. Tkachuk at the location and at the time in which the Offences occurred through the use of cell phone transmission data which connects the numbers associated with Mr. Coghill and with Mr. Tkachuk's girlfriend to cellular transmission towers near Lumby, British Columbia.
- [31] Before moving to my analysis, as I referenced above, the reason the police are trying to link Mr. Coghill with Mr. Tkachuk is that Mr. Tkachuk's DNA was matched to the DNA recovered from an item that was allegedly at the Crime Scene, specifically from the inside nose/mouth of the respirator mask recovered in the Truck. Accordingly, investigators believe they have evidence linking Mr. Tkachuk with the Offences and thus seek to establish a connection between Mr. Coghill, Mr. Tkachuk and the Crime Scene on the night of the Offences.

III. Analysis - Is the First ITO Sufficient?

- [32] In these reasons, I will first focus on the sufficiency of the First ITO and then, if necessary, consider whether the Second ITO is sufficient or needs to be excised and what may flow from those decisions.

A. Relevant Legislative Provisions - Issuance of Warrants

- [33] The preconditions for issuing a general warrant are set out in s. 487.01(1) of the Code:
- (a) the judge is satisfied by information on oath in writing that there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed and that information concerning the offence will be obtained through the use of the technique, procedure or device or the doing of the thing;
 - (b) the judge is satisfied that it is in the best interests of the administration of justice to issue the warrant; and
 - (c) there is no other provision in this or any other Act of Parliament that would provide for a warrant, authorization or order permitting the technique, procedure or device to be used or the thing to be done.
- [34] The preconditions for issuing a production order are set out in s. 487.014(2) of the Code:

- (2) Before making the order, the justice or judge must be satisfied by information on oath in Form 5.004 that there are reasonable grounds to believe that
- (a) an offence has been or will be committed under this or any other Act of Parliament; and
 - (b) the document or data is in the person's possession or control and will afford evidence respecting the commission of the offence.
- [35] As I referenced above, there is no dispute that the First ITO establishes that an offence has been committed. As such, the requirements contained in s. 487.01(1)(a) regarding the issuance of a general warrant and s. 487.014(2)(a) regarding the issuance of a production order are satisfied. Further, Mr. Coghill accepts that there was no other provision of the Code or other Act of Parliament that would provide for the warrant. As such, s. 487.01(1)(c) of the Code is satisfied.
- [36] Accordingly, the focus of this application is that Mr. Coghill contends that the First ITO does not set out reasonable grounds to believe that, in the language of the general warrant provision, "information concerning the offence will be obtained" based on the material sought, and, in the language of the production order provision, that the material "will afford evidence respecting the commission of the offence".
- [37] I will now turn to a review of the governing legal principles in respect of challenges to the facial validity of warrants.

B. Governing Legal Principles

- [38] The legal principles that govern a review of the validity of a production order are the same as those that govern a review of the validity of a search warrant. The Supreme Court of Canada in *R. v. Garofoli*, [1990] 2 S.C.R. 1421, 1990 CanLII 52, sets out the test for the reviewing judge in determining whether a search warrant was properly issued.
- [39] The inquiry in reviewing the facial validity of a warrant or a production order requires the reviewing judge to determine whether the ITO contains sufficient credible and reliable evidence that might reasonably be believed, on the basis of which the authorizing justice could have concluded that the statutory preconditions for the general warrant had been met: see *Garofoli* at 1452; see also *R. v. Araujo*, 2000 SCC 65 at paras. 51, 54; *R. v. Morelli*, 2010 SCC 8 at para. 40; *Wilson* at para. 37.
- [40] A challenge to the facial validity of the ITO limits the scope of the review to considering whether, on an examination of the face of the information disclosed within the four corners of the ITO, the justice could have issued the production order. The record to be examined is thus fixed to the ITO itself--the record is not amplified on review, as it would be in a sub-facial challenge: *R. v. Sadikov*, 2014 ONCA 72 at para. 37, citing *Araujo* at para. 19; *Wilson* at para. 39.

- [41] The reviewing judge's role is to determine whether the ITO contains reasonable grounds to support the statutory requirements of the warrant or production order provisions. The reasonable grounds have been described as "the point at which credibly-based probability replaces suspicion": Vu BCCA at para. 39. In determining whether the standard has been satisfied, the reviewing judge should adopt a "practical, non-technical, and common-sense assessment of the totality of the circumstances": Vu BCCA at para. 39.
- [42] The standard to be applied by the reviewing judge was also described succinctly by Madam Justice Wilson in *R. v. Debot*, [1989] 2 S.C.R. 1140 at 1166, 1989 CanLII 13:

The question as to what standard of proof must be met in order to establish reasonable grounds for a search may be disposed of quickly. I agree with Martin J.A. that 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.

- [43] Further, the question for the reviewing judge is whether there is "reliable evidence that might reasonably be believed on the basis of which the authorization could have issued", not whether it should have been granted: Vu SCC at para. 16. Importantly, the determination of whether reasonable grounds exist involves a consideration of the totality of the circumstances, and the ITO must be examined as a whole, not in a piecemeal fashion, because "each piece of evidence colours other pieces of evidence and a fuller picture emerges by considering all of the evidence together": *R. v. Whitaker*, 2008 BCCA 174 at para. 41, leave to appeal to SCC ref'd, [2008] S.C.C.A. No. 296, citing *R. v. Lam*, 2002 BCCA 99 at para. 10; *R. v. Hayer*, 2022 BCSC 769, at para. 33. Further, the reviewing judge should examine the information in totality in a "practical, non-technical, and common sense basis": *R. v. Liu*, 2014 BCCA 166 at para. 35, citing *R. v. Scott*, 2012 BCCA 99 at para. 42.
- [44] It is with these statutory requirements and legal principles in mind that I now turn to considering whether, after reviewing the totality of the circumstances in the First ITO, the issuing justice could have issued the First General Warrant and Production Orders.

C. Were there Sufficient Grounds in the First ITO to Support the Issuance of the First General Warrant and the Production Orders?

- [45] As I described in the introduction, the aim of the First ITO is to establish sufficient grounds to link Mr. Coghill to the Crime Scene and to Mr. Tkachuk. In simple terms, the police attempt to establish these grounds in three manners. First, through Mr. Martindale's information that Mr. Coghill had some particular knowledge of Mr. Jurica. Second, that Mr. Coghill and Mr. Tkachuk were known to each other, which is important because the police believe that Mr. Tkachuk's DNA was found on the items related to the Crime Scene. Third, the police argue that a cell phone associated with Mr. Coghill was used in proximity to the Crime Scene to contact a cell phone connected to Mr. Tkachuk close in time to the Offences.

- [46] I will deal with each of these individual aspects of the First ITO now, but reiterate that my task is to examine the First ITO as a whole, not by focusing piecemeal on specific elements of the First ITO.
- i. Initial Information Regarding Mr. Coghill's Potential Involvement in the Offences
- [47] Important to my consideration of the sufficiency of the First ITO are the summaries of the statements taken by the police from Mr. Jurica, Ms. Kado and Mr. Martindale. As noted above, initially, Mr. Jurica and Ms. Kado provided untruthful statements to the police and denied that the Offences occurred. However, in a subsequent interview, they provided other information to the police regarding the Offences. Relevant to this application are the following pieces of information provided to the police by Mr. Jurica and Ms. Kado, and contained in the ITO:
- a) Two men were involved in the assault;
 - b) Neither of the males were known to Mr. Jurica or Ms. Kado;
 - c) The males both had shotguns and shot Mr. Jurica before stealing money, a television, two e-bikes and the Truck;
 - d) Ms. Kado struck Male 1 in the head with a baseball bat. She believed that she struck Male 1 with sufficient force to injure him; and
 - e) Male 2 had a kerchief across his face with a gas mask overtop. The gas mask had grey filters on it and was similar to the gas masks worn with hazmat suits.
- [48] From this information I accept that it is reasonable to believe that two men were involved in the Offences and neither of the men were known to Mr. Jurica or Ms. Kado. Further, Male 1 was struck with sufficient force by Ms. Kado such that the injury could have caused Male 1 to bleed.
- [49] The Truck was located by the RCMP on Highway 6 near the intersection with Dure Meadow Road in Lumby, British Columbia. Two respirator masks were seized from the box of the Truck. Mr. Jurica subsequently informed the police that the respirator masks found in the Truck did not belong to him.
- [50] In the First ITO, Cst. Jackson also affirms that as part of the investigation, police contacted Mr. Martindale.
- [51] I pause to note that it is clear to me that the information Mr. Martindale provided to the police is what first sets the police to consider Mr. Coghill as a potential suspect.

- [52] Mr. Martindale advised the police that he was friends with Mr. Jurica. He told police that Mr. Jurica called him right after the Offences and advised him of what happened. Based on what Mr. Jurica told him, Mr. Martindale suspected that Christopher Gibson was involved in the crime because Male 1 and Male 2 made comments to Mr. Jurica, which I will now describe, that Mr. Martindale believes only Mr. Gibson would know.
- [53] On September 24, 2019, Mr. Martindale provided a statement to Cst. MacQueen in which he stated that Mr. Jurica called him twice on September 18, 2019, soon after the Two Males had left the Dure Property after the Offences. During the call, Mr. Jurica told Mr. Martindale that the assailants stated the following to Mr. Jurica during the attack:
1. Where is your stash?
 2. Where's your oxy's [sic] and cash?
 3. You're just a wife beater.
- [54] These comments led Mr. Martindale to believe that Mr. Gibson was involved in the Offences because, approximately three months before the interview, which I estimate to be mid-June 2019, Mr. Martindale was at the Dure Property when he witnessed Mr. Gibson and Mr. Gibson's spouse, Tatjana Coghill, attend at the property so that Mr. Gibson could sell Mr. Jurica some Oxycodone. Mr. Martindale also told police that sometime in July 2019, Ms. Kado sent him a text in which she told him that Mr. Jurica had assaulted her. Mr. Martindale also explained to the police that he told Mr. Gibson about Ms. Kado's domestic violence claim, after which Mr. Gibson suggested that they rob Mr. Jurica. Further, Mr. Martindale told the police that he did not tell anyone else about Ms. Kado's claim of domestic violence.
- [55] Mr. Martindale told police that Mr. Coghill is the father of Tatjana Coghill and is Mr. Gibson's father-in-law. Mr. Martindale suspects that Mr. Coghill was involved in the Offences because of Mr. Coghill's association with Mr. Gibson and because Mr. Martindale believes that Mr. Coghill has a history of drug use and violent offences.
- [56] I will deal first with Mr. Coghill's argument that the First ITO fails to establish grounds that Mr. Coghill is involved in the Offences because of Mr. Martindale's assertion that Mr. Coghill is a drug user with a history of violent offences. I will then turn to Mr. Martindale's belief as to why Mr. Coghill was involved in the Offences.
- [57] Mr. Coghill argues that the information provided by Mr. Martindale is unreliable because it is double hearsay. Mr. Martindale was not present during the Offences and did not hear the Two Males speak to Mr. Jurica. Mr. Coghill further submits that the information regarding Mr. Coghill's propensity to use illicit drugs and commit violent offences is not properly sourced and provides no information as to how or why Mr. Martindale believes that Mr. Coghill was a drug user or offender. As such, he asserts that the justice issuing the First General Warrant and Production Orders has no information to conduct the obligatory independent assessment of the reliability of the materials said to implicate Mr. Coghill.

- [58] Mr. Coghill also asserts that there is no corroboration of Mr. Martindale's evidence. More specifically, he points to the fact that, upon receiving Mr. Martindale's information, the police's database searches regarding Mr. Coghill only produced that an individual had suspected Mr. Coghill and his daughter Tatjana Coghill of committing a break-in, but the file was closed due to lack of evidence.
- [59] I accept that an ITO can contain hearsay evidence. However, that evidence must be properly used, which includes presenting the evidence in a manner that allows the issuing justice to make up his or her own mind about the trustworthiness of the source of the evidence: *R. v. Vaz*, 2015 BCSC 728 at para 43. When considering hearsay evidence, corroborating evidence may provide a piece of evidence which tends to convince the court that the declarant is telling the truth: *R. v. Gilmour*, 2017 ABQB 735 at para. 32. Constable Jackson did not include the source of Mr. Martindale's belief that Mr. Coghill used drugs and tended to commit offences. This weakens the evidence because it does not give the justice evaluating the First ITO any basis to determine whether Mr. Martindale's propensity evidence about Mr. Coghill is credible or reliable. In other words, I agree that Mr. Martindale's statement about Mr. Coghill's propensity to use drugs or commit violent offences is an assertion with little probative value.
- [60] I accept that information on the police database that Mr. Coghill was suspected of committing a break-in, is some, albeit limited, information that provides some support for Mr. Martindale's claim. However, I note that Mr. Martindale's statement was made before Mr. Gibson reported his suspicion of Mr. Coghill's behaviour. I am also cognizant that Mr. Gibson's statement to the police that resulted in the police files also amounts to little more than suspicion. The police closed the file and no charges were laid against Mr. Coghill. I want to be clear that I recognize the danger of using one unsupported suspicion to bolster another unsupported suspicion.
- [61] I also find that while Mr. Martindale's statements regarding his suspicions of Mr. Coghill's involvement in the Offences are assertions, the First ITO describes the steps that Mr. Martindale took upon learning of the circumstances of the Offences from Mr. Jurica. In my view, this tends to provide some credibility to his statements. Specifically, Mr. Martindale describes that when he received the information from Mr. Jurica regarding the statements made by the Two Males, he confronted Mr. Gibson at Mr. Gibson's house.
- [62] Mr. Martindale also explains why he believed Mr. Gibson had unique access to the information stated by the Two Males regarding Ms. Kado's accusation that Mr. Jurica had abused her (i.e., the "you're just a wife-beater" statement). He also says that at one time Mr. Gibson and Ms. Tatjana Coghill were at the Dure Property to purchase Oxycodone, thus linking Mr. Gibson to the two statements of "Where's your oxy's [sic] and cash" and "Where is your stash?". While the issue of double hearsay remains, regarding what Mr. Martindale recounts as being said by the Two Males, I accept that there is a reasonable inference that, given these two pieces of distinct information purportedly stated by the Two Males, there appears to be a common connection to each statement: Mr. Gibson.

[63] In summary regarding Mr. Martindale's evidence in the ITO, I accept that there are issues with Mr. Martindale's suspicions as set out in the First ITO because the statements made by the Two Males to Mr. Jurica are double hearsay and his evidence of his belief that Mr. Coghill has a propensity to use drugs and commit violent crimes does not provide the detail of how and why he came this belief. However, and very importantly for my conclusions, while Mr. Martindale's information is essential to the police moving the investigation forward, it is part of the start of the investigation and, in my view, a minor element of establishing the grounds for the First General Warrant and the Production Orders. In other words, Mr. Martindale's statement led the police to examine whether Mr. Coghill had other links to the Offences. I will explain those other steps now.

ii. Connections Between Mr. Coghill and Cell Phone 250-307-5187

[64] The First ITO sets out the basis for the police's belief that Mr. Coghill is associated with the cell phone number 250-307-5187.

[65] The First ITO provides that on February 18, 2020, Cst. Jackson, as part of the investigation into the Offences, attended at Mr. Coghill's last known address. Constable Jackson learned, in part, that Mr. Coghill was evicted in December 2019, and that the phone number listed on Mr. Coghill's rental application was 250-307-5187. Further, a search of the police files revealed that on March 23, 2020, the police interviewed Danielle Hudgins, Mr. Coghill's girlfriend. Ms. Hudgins stated to the police that Mr. Coghill's cellular telephone number was 250-307-5187.

[66] The police determined that the cell phone number 250-307-5187 was a Telus number associated to the name Justin Kase. Further inquiries by the police into the name Justin Kase established that there was no one in British Columbia with a driver's license or criminal record with that name. Although one police file from 2009 in Prince George had the name "Justin Kase" associated to it, the file is no longer under investigation. Constable Jackson sets out in the First ITO that he believes the name Justin Kase is fraudulent. Given that the name has a distinct flavour of a "pun name" (i.e., a play on words of the phrase "just in case"), and there are no apparent connections to individuals living in British Columbia, I accept Cst. Jackson's conclusion that Justin Kase is a fraudulent name attached to the Telus account for the cell phone 250-307-5187. Further, I am satisfied that the First ITO provides a sufficient basis for me to accept that phone number 250-307-5187 is associated to Mr. Coghill.

iii. Connections Between Mr. Coghill and Mr. Tkachuk

[67] One thrust of the First ITO is to establish that there is a connection between Mr. Coghill and Mr. Tkachuk. I will now, in no particular order, address the basis for the claims in the First ITO said to support that the two men are connected.

[68] Through the cell phone transmission records, the police determined that the phone number associated to Mr. Coghill (250-307-5187), was in contact through the Lumby transmission tower with the cellular telephone number, 250-306-3504. Constable Jackson reviewed a

police file dated March 8, 2017, in which Nichole Watson reported mischief to her vehicle. In that report, Ms. Watson provided her cellular telephone number as 250-306-3504. Constable Jackson reviewed another report from July 2, 2019, in which Ms. Watson advised the police that Mr. Tkachuk was her boyfriend. This is the basis to connect Mr. Coghill with Mr. Tkachuk through calls made from the phone number associated to Mr. Coghill to Ms. Watson's phone.

- [69] I acknowledge that the connection between Mr. Tkachuk and the telephone number 250-306-3504 required the justice issuing the First General Warrant and the Production Orders to draw at least three inferences. First, that Ms. Watson's phone number in September 2019 had not changed from 250-306-3504. Second, that Ms. Watson and Mr. Tkachuk were still in a relationship on September 18, 2019. Third, that Mr. Tkachuk was either using Ms. Watson's phone or that the phone was somehow used in connection with the Offences through Mr. Tkachuk.
- [70] The First ITO provides information that Nichole Watson's telephone number in March 2017 was 250-306-3504. This is more than a year and a half before the Offences and requires an inference that she had the same number in September 2019. In my view, it is not unreasonable to infer that the same cellular number was still associated to Ms. Watson in September 2019. While it would have been preferable for Cst. Jackson to include updated information regarding Ms. Watson's telephone number, I am satisfied that, given it was a number found on Transmission Records and the other connections between Mr. Tkachuk and Ms. Watson, the inference has been made. I pause to note that these issues highlight that when reviewing the facial validity of an ITO, the reviewing court must be careful not to focus on one particular fact, and instead must consider information in its totality.
- [71] The First ITO sets out that Mr. Tkachuk was Ms. Watson's boyfriend in July 2019. As such, an inference is required that they were still in a relationship two months later. In my view, given the period of only two months between the information linking Ms. Watson to Mr. Tkachuk and the date of the Offences, it appears a reasonable inference that there were reasonable grounds to believe that the two were still connected in some manner.
- [72] In terms of whether the First ITO supports a reasonable belief that Mr. Tkachuk or others were using the phone associated with cellular number 250-306-3504, I find support in that inference based on the Transmission Records which demonstrate that the phone was used on September 18, 2019 in proximity to the Crime Scene and the location of where the Truck was found. I will discuss my conclusions regarding the importance of the Transmission Records in linking Mr. Coghill to the Offences in more detail below.
- [73] Another purported connection between Mr. Coghill and Mr. Tkachuk set out in the First ITO is that, on November 30, 2019, the police investigated a single vehicle collision in Lumby, British Columbia. The police report provides that by the time the police arrived the occupants had fled the vehicle. However, a prescription pill bottle was recovered from the vehicle that had Mr. Tkachuk's name on it. Mr. Tkachuk had checked into the hospital on the

same day as the car accident and told the staff that he sustained his injuries from falling off a ladder. The vehicle involved in the accident was registered to Brendan Roebuck. Mr. Roebuck stated to the police that he had sold the vehicle to Mr. Coghill in May 2019.

[74] A further purported connection between Mr. Coghill and Mr. Tkachuk set out in the ITO is that, on March 4, 2020, two members from the Vernon RCMP attempted to conduct a traffic stop on a vehicle occupied by two males. The vehicle fled. The RCMP members located the vehicle a short distance away and identified Mr. Coghill as the driver as he attempted to enter a house. Although the passenger in the vehicle was not identified, as the RCMP members searched the dwelling house, Mr. Tkachuk walked out of the house. The RCMP members suspect that Mr. Tkachuk was the passenger in the vehicle with Mr. Coghill, but were unable to prove it.

[75] As I will discuss below, there is a danger of examining the information set out in the First ITO in a piecemeal basis. In isolation, individual pieces of information may appear weak and unsupported, however, I must consider the information in a larger context of the totality of the information set out in the First ITO.

iv. Cell Phone Activity Near the Time and Location of the Offences

[76] The First ITO references the Transmission Tower records as setting out grounds that the cell phone associated to Mr. Coghill (250-307-5187) utilized a transmission tower called "Lumby" to contact a phone associated to Mr. Tkachuk's girlfriend Nichole Watson before and after the Offences. The Crown argues that this provides evidence that Mr. Coghill was in contact with Mr. Tkachuk in the area of the Crime Scene on September 18, 2019.

[77] Mr. Coghill asserts that there are at least three problems with the First ITO in respect to the cell phone information and the attempt to link Mr. Coghill's cell phone to Mr. Tkachuk and the Crime Scene. First, Cst. Jackson provides unsupported expert evidence as to how cellular telephones utilize transmission towers, the details of the location of the transmission towers and their meaning. Second, the First ITO does not support its conclusion that Mr. Tkachuk would be using Ms. Watson's cell phone. Third, Cst. Jackson does not set out reasonable grounds for why he believes the Production Orders will afford evidence of the Offences other than a bald assertion that he believes that parties to a crime would communicate before and after the crime. Again, Mr. Coghill argues this is a bald assertion without support.

[78] In the First ITO, Cst. Jackson sets out that the Transmission Records from a Rogers cellular transmission tower called "Lumby" show that the cell phone number associated to Mr. Coghill utilized that tower on September 17, 2019 at 11:24 p.m. and September 18, 2019 at 1:00 am and 1:15 am. The phone number called by the phone number associated to Mr. Coghill was 250-306-3504, the number associated to Ms. Watson. Constable Jackson sets out that the location of the Rogers cellular tower named Lumby is 50.208722 Latitude and -118.9594176 Longitude. I note that Cst. Jackson has used decimal degrees to express the coordinates of these locations.

- [79] The Transmission Records also provide that on September 18, 2019, at 1:28 am, Mr. Jurica's cell phone utilized a Telus cellular transmission tower named Lumby located at 50.208648 Latitude and -118.959415 Longitude.
- [80] While Cst. Jackson writes that the calls made by the cell phone associated with Ms. Watson and the telephone associated with Mr. Coghill were "connected to the same tower", the coordinates are, in fact, not identical. That said, while not the identical tower, given the precision of Latitude and Longitude coordinates, I am satisfied that the two transmission towers are very close to each other.
- [81] In regard to Mr. Coghill's argument that the use of coordinates requires further explanation by Cst. Jackson or expert opinion, I conclude that no specific expert opinion is required to understand the distance between two points given by their latitude and longitude coordinates. The coordinates provide a way to describe a very specific point on the earth's surface. In this case, based on the coordinates provided by Cst. Jackson, the Rogers and Telus transmission towers are mere metres away from each other. However, I pause to comment that, while not mandatory, it would have been helpful for Cst. Jackson to provide some explanation that the Rogers and Telus transmission towers were close to each other.
- [82] Mr. Coghill's argument about the requirement of expert evidence to understand how cell phones utilize transmission towers is in my view, respectfully, misguided. More important than the location of the transmission towers near Lumby is that the Transmission Records only provide cell phone activity that is in close proximity to the Crime Scene and the location where the police recovered the Truck on the evening of September 17 and early morning hours of September 18, 2019. This is clear from reading the First ITO which sets out that when the police sought the Transmission Records they sought information from the telecommunications companies for the following information:

Cellular tower records pertaining to all sectors, frequencies, and technologies, of all incoming and outgoing telephone calls and text messages made and received from cellular towers at or near the following two locations:

1. 6-380 Dure Meadow Road, Lumby BC, VOE 2G7; and
2. The intersection of Dure Meadow Road, Lumby BC, VOE 2G7 and Highway 6, Lumby BC.

[Emphasis added.]

- [83] In my view, the request to obtain the Transmission Records "at or near" the Crime Scene or where the Truck was recovered specifically filters the information so that the Transmission Records capture activity near those locations. Limiting the request to only cell phone transmission towers that would be utilized in that specific area negates the need for expert evidence to explain how cell phones utilize transmission towers. Put another way, the Transmission Records provide only cell phone activity of phones used by cell phones "at or near" the Crime Scene and where the Truck was recovered. As such, if a person used a cell phone "at or near" those locations, the information would be captured by the "Lumby"

transmission towers.

- [84] Although unnecessary, there is further evidence in the First ITO which supports the conclusion that cell phones used in the area would be captured by the transmission towers. The phone call made by Mr. Jurica to Mr. Martindale that is thought to be made as he drove with Ms. Kado to the Hospital utilized the Telus "Lumby" transmission tower at 1:44 am on September 18, 2019, for the start of the call but stopped utilizing that transmission tower by the end of the call.
- [85] The travel time and the fact that Mr. Jurica was driving at the time of this call was corroborated by video obtained from an AFD gas station that captured what appeared to be Ms. Kado's SUV driving past from the Dure Property to the Hospital at 1:40 am as well as video from the Hospital that purports to show Mr. Jurica entering the Hospital at 1:55 am. Put simply, I find that the fact that Mr. Jurica's cell phone utilized the "Lumby" transmission tower at the start of the call as he travelled from the Dure Property to the Hospital and then utilized another transmission tower as he moved away from the Dure Property supports a conclusion that cell phones used near the Crime Scene utilize the cellular transmission towers called "Lumby". This is some empirical evidence supporting a finding that cellular telephones used at the Crime Scene or at the location where the Truck was recovered would use the "Lumby" transmission towers and there was no expert evidence needed to allow the issuing justice to come to that conclusion.
- [86] As set out above, I accept that the First ITO provides a sufficient basis to accept that the cell phone number 250-306-5187 was associated to Mr. Coghill. As such, given Mr. Coghill's cell phone was captured using on the Lumby transmission tower, I am satisfied that the First ITO provides a credible-based probability that Mr. Coghill was using his cell phone "at or near" the Crime Scene and the location of the recovery of the Truck on the evening of September 17, 2019 and the early morning hours of September 18, 2019.
- [87] Mr. Coghill also argues that the First ITO fails to connect the phone number associated with Ms. Watson to Mr. Tkachuk. I disagree. The First ITO sets out that Mr. Tkachuk is Ms. Watson's boyfriend. Further, similar to my conclusion that the Transmission Records demonstrate that Mr. Coghill was using his phone in proximity to the Crime Scene near the time of the Offences, I am satisfied that the phone associated with Ms. Watson was also being used at that time and in that location. Given I accept the connection between Ms. Watson and Mr. Tkachuk, I am satisfied that the use of Ms. Watson's phone near the Crime Scene provides a reasonable inference that further information relating to the phones sought in the Production Orders will afford evidence of the Offences.
- [88] As a final note in respect of the Production Orders sought, I will address Mr. Coghill's argument that Cst. Jackson has not established why records for the cell phones of Mr. Coghill and Ms. Watson will afford evidence of the Offences other than what he calls his a bald assertion that, "It is my experience that crimes such as the Named Offences require communication before, during and after the criminal activity."

- [89] In my view, this is acceptable for the purposes of supporting the Production Orders. Constable Jackson states that he has been an RCMP officer since 2009. As such, he would have had experience in criminal investigations. It is not, in my view, necessary that he state further information to support this conclusion. Further, and importantly, based on his experience, which I accept, it is reasonable to believe that the records sought from the communication companies in respect of the cell phones associated to Mr. Coghill and Ms. Watson will afford evidence of the Offences for the date range sought in the Production Orders. In this regard, I approach this information on a "practical, non-technical and common sense basis": Liu at para. 35. I will now turn to whether the First ITO sets out sufficient grounds to believe that the telephone records will afford evidence of the Offences in more detail.
- [90] I accept that the duration of the telephone records sought in the Production Orders of a week before the date of the Offences (September 11, 2019) to one week after the date of the Offences (September 25, 2019), while at the outer limit of reasonableness in terms of scope, is reasonable in the circumstances of this case. The details of the Offences set out in the First ITO, in my view, would require planning and coordination given the rural area in which it occurred - requiring a transportation plan, the use of disguises, the use of weapons and having zip ties indicating a premeditated plan to restrain the victims. It is reasonable to conclude that at least some of this communication would occur by cell phone. Further, given the serious nature of the Offences, I am satisfied that it is reasonable to believe that there would be post-offence communication. I conclude that Cst. Jackson's belief that crimes such as the Offences require communication before, during and after the offence reasonable in the circumstances of this case. In other words, I find that the First ITO demonstrates both Cst. Jackson's subjective belief, and that belief is objectively supported by the information in the First ITO.
- [91] In respect of the types of information sought by the police in the Production Orders, I accept that the First ITO establishes that there are reasonable grounds to believe that the information sought in respect of the cell phones will afford evidence respecting the commission of the Offences. It is reasonable to believe that the subscriber and user information will provide evidence of who had care and control of the cell phones around the times of the Offences. I accept that records of incoming and outgoing telephone calls and texts will identify witnesses and additional parties to the Offences on the basis, as just set out, that I accept that the Offences appear organized and premeditated such that at least some advanced planning and coordination was necessary. On the same basis, I conclude that the sector and cellular tower information will provide evidence of the whereabouts of the cell phones around the times of the Offences.

- [92] I am also satisfied by Cst. Jackson's explanation that, in his experience, IMEI's are unique to each cell phone and that information is important to an investigation because an individual can use one SIM card in numerous devices. As such, I accept that obtaining the IMEI number used in the communication will identify which cellular device was associated to the communication around the times of the Offences.
- v. Is the First ITO Sufficient When Considered in Totality?
- [93] As I understand Mr. Coghill's submission, he argues that the First ITO is largely based on speculation and hearsay. He contends that it does not provide a sufficient basis to authorize the First General Warrant or the Production Orders. As described above, he argues that the information from Mr. Martindale in which Mr. Martindale expresses his belief that Mr. Coghill was involved in the Offences is uncorroborated double-hearsay. Mr. Coghill contends that the information regarding how cellular telephones utilize cellular transmission towers is unsupported by the facts and amounts to either conclusory statements or expert opinion evidence. In this regard, Mr. Coghill says there is no credible evidence that links Mr. Coghill to the Crime Scene and, as such, the Offences. Finally, Mr. Coghill also asserts that the First ITO fails to establish a link between Mr. Coghill and Mr. Tkachuk as well as any link between Ms. Watson's telephone number and Mr. Tkachuk that rises above mere suspicion.
- [94] I accept Mr. Coghill's argument that specific portions of the First ITO are weak and, if taken individually, may not reach the standard of establishing credible-based probability of Mr. Coghill's involvement in the Offences. For example, the First ITO's reliance on the double hearsay information provided by Mr. Martindale suspecting Mr. Coghill is speculative and problematic. To reiterate, it is based on Mr. Martindale's conjecture that his telling Mr. Gibson about Ms. Kado's disclosure of a domestic violence claim against Mr. Jurica made its way to Mr. Coghill through Mr. Gibson's ex-spouse, Tatjana Coghill. I agree that, taken on its own, this information does not meet the requisite standard of "credible and reliable evidence that might reasonably be believed, on the basis of which the authorizing justice could have concluded that the statutory preconditions for the general warrant had been met": Garofoli at 1452. However, in my view, Mr. Martindale's information provides only the starting point, not the end point, of the investigation. It establishes Mr. Coghill as a potential suspect and in colloquial terms, "puts him on the radar".
- [95] Speculation and bald assertions cannot provide a basis to issue a warrant or production order. However, in this case, the police took Mr. Martindale's comments and continued to investigate whether there were connections between Mr. Coghill and the Offences. To reiterate, the role of a judge reviewing the facial validity of an ITO must consider the ITO as a whole. This was aptly articulated by Justice Devlin in Hayer:

- [33] A determination with respect to whether reasonable grounds exist requires a consideration of the totality of the circumstances, and the ITO must be examined as a whole, not in a piecemeal fashion, because "each piece of evidence colours other pieces of evidence and a fuller picture emerges by considering all of the evidence together": *R. v. Whitaker*, 2008 BCCA 174 at para. 41 (leave to appeal ref'd [2008] S.C.C.A. No. 296).
- [96] In my view, while certain strands of the information in the First ITO may, taken individually, suffer from deficiencies in establishing a link between Mr. Coghill and the Offences, taken in totality, the circumstances meet the requisite standard. In my view, when considered cumulatively, the information forms a web that is sufficiently robust to shift the conclusions from suspicion to a reasonable credibly-based probability such that the justice could have issued the First General Warrant and Production Orders.
- [97] I acknowledge that, from my perspective, the strongest information that ties the evidence together is that the cell phone number associated to Mr. Coghill was used in proximity to the Crime Scene near the time of the Offences. This information builds on the other information contained in the First ITO to establish the reasonable grounds to believe that Mr. Coghill had a connection to the Offences that justifies the General Warrant and the Production Orders. In other words, I find that taken together, the information in the First ITO is compelling, credible and corroborated.
- [98] Accordingly, despite the very able arguments of Mr. Coghill's counsel, I conclude that the First ITO provides a reasonable basis to believe that evidence of the commission of the Offences will be found in the First General Warrant that seeks seizure and testing of the Clothing from the Vernon RCMP detachment and for the Production Orders requiring the telecommunications companies for records relating to the cellular telephone numbers associated with Mr. Coghill and Ms. Watson.
- [99] I note that Mr. Coghill cites *R. v. Spence*, 2018 NLSC 28, as an analogous case. However, I find that *Spence* is distinguishable and ultimately unhelpful. In *Spence*, the Supreme Court of Newfoundland and Labrador held there were no reasonable grounds for issuance of a general warrant because the evidence connecting an accused to a robbery was insufficient. The ITO in that case was based almost entirely on a mere association between the accused and another person with a reputation for criminal activity, without any other ties between the accused and the crime scene. In fact, the police were aware that the accused's shoes did not match footprints found at the crime scene, but the police did not include that piece of information in the ITO. These circumstances contrast with the case at bar, where the First ITO contains information that goes beyond an association between Mr. Martindale's belief that Mr. Coghill was involved, such as the cell phone number associated to Mr. Coghill. Again, I stress the importance of considering the First ITO in its totality rather than a piecemeal fashion.

D. Summary of Conclusions

[100] In summary, I conclude that taken cumulatively, the information in the First ITO sets out credible and reliable evidence such that the First General Warrant and the Production Orders could have been issued as there are reasonable and probable grounds to believe that evidence of the Offences will be obtained through seizing and analyzing the Clothing and in obtaining the cell phone records. To reiterate, the basis of my conclusion includes the following information provided in the First ITO:

- a) Mr. Tkachuk's DNA was recovered from items thought to be related to the Offences. I conclude this provides grounds to believe Mr. Tkachuk was at the Crime Scene;
- b) The black hoodie recovered from the Crime Scene has DNA on it of an unknown male who is not Mr. Jurica or Mr. Tkachuk;
- c) Ms. Kado stated to the police that the man she struck with the baseball bat (which she says she did with sufficient force to cause injury) was wearing black during the Offences. I conclude that this provides grounds to believe that a DNA analysis of the black hoodie may establish the identity of the male with Mr. Tkachuk during the Offences;
- d) The cell phone number 250-307-5187 is associated to Mr. Coghill;
- e) The cell phone associated to Mr. Coghill was in proximity to the Crime Scene and location of the recovery of the Truck on the night of September 17, 2019, and the early morning of September 18, 2019. I conclude this provides a basis to believe that Mr. Coghill was at those two locations around the time of the Offences;
- f) The cell phone associated to Mr. Coghill when using the Lumby transmission tower around the time of the Offences was contacting a telephone that is registered to Nichole Watson;
- g) At the time of the Offences, there are reasonable grounds to believe that Mr. Tkachuk and Ms. Watson were in a relationship; and
- h) Mr. Coghill had some connection to Mr. Tkachuk both prior to and after the Offences.

[101] I conclude that this information, considered in its totality, provides reasonable grounds to believe that evidence of the commission of the Offences will be found through a DNA test of the Clothing as well as in the production of the records sought from Chatr Mobile in relation to the cellular telephone associated with Mr. Coghill and from Telus in respect of the phone number associated to Ms. Watson.

[102] Given I have found that the First ITO provides sufficient grounds such that the General Warrant and the Production Orders could issue, I need not determine if the Second ITO sets out sufficient grounds to support the DNA Warrant and the further production order because it is largely if not entirely based upon much of the same information contained in the First ITO, as well as the results of analysis of evidence seized pursuant to the First General Warrant and the Production Orders. As such, I dismiss Mr. Coghill's application.

[103] Given the importance of the seizure of the Clothing to this proceeding, I will provide an alternative analysis if there were not reasonable and probable grounds set out in the First ITO to justify the First General Warrant. I will now turn to whether the Clothing should be admitted under s. 24(2) of the Charter, if seized without a warrant.

IV. Alternative Analysis - If the General Warrant Was Not Valid, Should the Evidence Be Admitted?

i. If There Were Not Sufficient Grounds, Was the Unwarranted Search a Violation of Mr. Coghill's Section 8 Rights?

[104] The Crown concedes that Mr. Coghill has a reasonable expectation of privacy in the Clothing, but argues that it is diminished because he has made no steps to retrieve his items for at least two years. I accept the Crown's concession and agree with Mr. Coghill's submissions that he had not abandoned the Clothing such that his reasonable expectation of privacy over the Clothing was extinguished. To this end, I note that Cst. Jackson acknowledges in the First ITO that Mr. Coghill expressed an interest in having his items returned to him in May 2019. However, I also observe that Mr. Coghill took no steps to collect these items from the Vernon RCMP detachment.

[105] I accept Mr. Coghill's assertion that given the Clothing was seized in an investigation in which Mr. Coghill was the victim, it would be improper to assume that he relinquished his privacy interest. Mr. Coghill cites s. 8 of the Victims of Crime Act, R.S.B.C. 1996, c. 478, in support of his submission. Section 8 sets out the objectives of the Victims of Crime Act which include:

8. To the extent that it is practicable, the government must promote the following goals:
 - a) to develop victim services and promote equal access to victim services at all locations throughout British Columbia;
 - b) to have victims adequately protected against intimidation and retaliation;
 - c) to have property of victims obtained by offenders in the course of offences returned promptly to the victims by the police if the retention is not needed for investigation or prosecution purposes;

[106] I accept that victims of crime have a right to privacy and are particularly vulnerable. Finding that they have no expectation of privacy in items that they provide to police as part of an investigation would not accord with the goals of the Victims of Crime Act, nor generally with the advancing the administration of justice.

[107] While I accept that Mr. Coghill has a privacy right in the Clothing, thus triggering Charter protection from unreasonable search and seizure, I find that it is somewhat tempered because for two years he took no steps to retrieve the clothing from the Vernon RCMP Detachment despite being contacted and asked whether he wanted the items returned. Indeed, the RCMP's contact with Mr. Coghill to ask if he wanted the return of the Clothing appears to generally accord with s. 8(c) of the Victims of Crime Act. In other words, the

RCMP could not be viewed as to be covertly or improperly keeping the Clothing.

[108] In sum, I find that the intrusion on Mr. Coghill's privacy expectation in seizing and analysing the Clothing is on the low end of the spectrum. That said, I also accept that, generally, victims' items held by the police for investigative purposes should not be available for a warrantless seizure for use in an investigation of the victim in an unrelated file. Put simply, I accept that the individual retains a reasonable expectation of privacy over those items held by the police.

ii. Can the Warrantless Search That Obtained the Clothing Be Justified Under Section 24(2) of the Charter?

[109] In this alternative analysis, having found that Mr. Coghill had a privacy interest in the Clothing and that a warrantless search would infringe his Charter rights against unreasonable search and seizure, I must turn to whether the evidence should be excluded pursuant to s. 24(2) of the Charter.

[110] Section 24 of the Charter provides as follows:

Enforcement of guaranteed rights and freedoms

24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[111] The analysis under s. 24(2) of the Charter involves two stages. The first is a threshold analysis: the court must determine whether there is a sufficient nexus between the breach of the Charter right and the evidence that is sought to be excluded, such that it was "obtained in a manner" the breached the Charter. Second, if the threshold is satisfied, the court must undertake the evaluative inquiry utilizing the framework established in *R. v. Grant*, 2009 SCC 32. These are the 'threshold' and 'evaluative' components, respectively, of s. 24(2).

- [112] I am satisfied that the Clothing, seized without a warrant, would be obtained in a manner that breached the Charter. I note that Courts have commented that "most cases travel a straight path between the breach and the evidence targeted for exclusion, meaning that the gateway inquiry is passed with ease": *R. v. Keshavarz*, 2022 ONCA 312 at para. 51. Given the threshold inquiry is satisfied, I will now turn to the evaluative inquiry established by the Supreme Court in *Grant*.
- [113] Under the evaluative inquiry, the court considers three factors to determine if evidence obtained through a Charter breach can nonetheless be admitted as evidence in a criminal trial. The analysis under *Grant* is to objectively determine whether the admission of the impugned evidence would bring the administration of justice into disrepute: *R. v. Bottomley*, 2023 BCSC 603 at para. 36, citing *R. v. Reilly* 2020 BCCA 369 at para. 65, aff'd in part 2021 SCC 38. In *Grant* at para. 71, the Supreme Court set out the following three factors for a court to consider in determining whether admitting the evidence would bring the administration of justice into disrepute:
- (1) the seriousness of the Charter-infringing state conduct;
 - (2) the impact of the breach on the Charter-protected interests of the accused; and
 - (3) society's interest in the adjudication of the case on its merits.
- [114] Justice Devlin helpfully described the *Grant* test in detail in *Hayer*:
- [38] These factors do not operate as a disjunctive three-part test. There are no particular findings under the three lines of inquiry that mandate particular results, and it "is not simply a question of whether the majority of the relevant factors favour exclusion in a particular case": *R. v. Harrison*, 2009 SCC 34 at para. 36 [*Harrison*]. The balancing mandated by s. 24(2) is "qualitative in nature and therefore not capable of mathematical precision": *Grant* at para. 140.
- [39] Rather, courts must assess and balance considerations under all three factors to determine whether, on balance and having regard to all the circumstances, admitting the impugned evidence would bring the administration of justice into disrepute in the long-term. In doing so, the trial judge assumes the objective perspective of a reasonable person, informed of all relevant circumstances and the values underlying the Charter. See *Grant* at paras. 68, 85-86.
- [40] The *Grant* factors look to the long-term integrity of, and public confidence in, the justice system: *Grant* at para. 68; *Harrison* at para. 36. The focus of s. 24(2) is also prospective. It starts from the proposition that damage has already been done to the public's confidence in the administration of justice by the Charter violation or violations that gave rise to the s. 24(2) analysis. Thus, the *Grant* analysis concerns itself with whether admitting the impugned evidence will do further damage to the reputation of the justice system: *Grant* at para. 69. Finally, s. 24(2) has a societal focus, and is aimed not at punishing the police or compensating the accused, but rather at systemic concerns, focusing on the broad impact of the admission of the evidence on the long-term reputation of the justice system: *Grant* at para.

70.

- [115] In terms of the seriousness of the breach, I accept that victims of crime should be assured that when they participate in police investigations as victims, the items they entrust to the police will not later be the subject to warrantless searches for other investigations. I consider that, generally, a warrantless search of items that the police hold on behalf of a victim for evidence to be used against that victim in a subsequent investigation is a serious breach. That said, in the particular circumstances of this case, Mr. Coghill must bear some responsibility because he did not retrieve his items from the police for several years, despite being prompted by the police to retrieve the items. In my mind, this lessens the seriousness of the breach somewhat. As a result, I would characterize the breach in this case as moderately serious. I also note that in this case, the police did make an effort to obtain a general warrant and so cannot be said to have acted recklessly.
- [116] The second inquiry in the Grant analysis requires that I consider the impact on the Charter-protected interests of the accused. This element requires a consideration of the effect on Mr. Coghill's human dignity and the intrusiveness of the breach. I find that seizing blood-stained clothing for analysis involves obtaining his DNA, which is highly personal information. However, while the information sought through analysis was highly personal, the manner in which the Clothing was obtained was not intrusive nor did it impact Mr. Coghill's dignity.
- [117] In other words, the Clothing was already in the possession of the RCMP, albeit stemming from a prior investigation wherein Mr. Coghill was a victim, when it was seized. As Mr. Coghill provided the Clothing as a victim in that separate investigation, the impact of its later seizure and testing from its place in RCMP possession on Mr. Coghill's Charter-protected privacy interests is on the lower end of the spectrum. In my view, while his expectation of privacy in his DNA is significant, the impact of the breach on that expectation is somewhat attenuated in the circumstances given he was not subject to the process of collection of his DNA: see *R. v. RLM*, 2021 ABQB 724 at para. 55.
- [118] The final inquiry under the Grant analysis is society's interest in the adjudication of the case on its merits. The Offences involve a home invasion, with serious violence, and the use of a firearm. Mr. Jurica and Ms. Kado were attacked as they slept in their beds. Mr. Jurica received serious injuries as the result of a shot with a non-lethal shot gun and then being beaten. Ms. Kado alleges she was bound and threatened with being shot in the face and having her fingers cut off. In my view, the alleged circumstances of the Offences described in the First ITO are extremely serious and society would have an interest in having this case tried on its merits. While I am aware that this factor cannot overwhelm the other factors, as Charter rights must be observed, in my view, the serious nature of this offence is important for my assessment and weighs in favour of inclusion. Further, given the evidence from the Clothing is DNA, it is highly reliable evidence and important to the Crown's case, both factors that support its inclusion under the third stage of the Grant inquiry: Harrison at paras. 81 and 83.

[119] In weighing the factors, I am satisfied that, on balance, in the context of this alternative analysis, while the Charter breach is serious, the long-term reputé of the justice system would be more damaged by excluding the evidence. The circumstances of this case do not demonstrate a systemic problem of behalf of the police that needs to be addressed. Nor to do I find that the police acted recklessly or demonstrated a pattern of disregard for Mr. Coghill's privacy rights. Nor is it a case where the police failed to consider or take advantage of lawful alternatives.

[120] In my view, if I were to find the seizure of the Clothing was warrantless - which I reiterate, I have not - and Mr. Coghill's s. 8 rights were breached, having considered the Grant factors, I am satisfied that it is justified to have the evidence included at trial pursuant to s. 24(2) of the Charter.

V. Conclusion

[121] Given the foregoing, I am satisfied that the First ITO meets the statutory requirements of the Criminal Code in establishing reasonable and probable grounds that evidence of the Offences will be found in the materials sought in the First General Warrant and the Production Orders. Accordingly, I dismiss Mr. Coghill's application.

[122] Alternatively, had I found the First ITO did not meet the requisite standard and Mr. Coghill's s. 8 Charter rights were breached, I would still have included the evidence pursuant to s. 24(2) of the Charter.

[123] I thank Ms. Verdurmen and Mr. Bellrichard for their well-argued submissions.

"Gibb-Carsley J."

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