
CANADA / JUDGMENT

R. v. Cuthbert

2019 BCSC 2119

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 2119 R. v. Cuthbert

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cuthbert,

2019 BCSC 2119

Date: 20190905

Docket: 44131-2

Registry: Prince George

Regina

v.

Fabian Fraser Cuthbert

Ravneet Singh Basi

Before: The Honourable Mr. Justice Tindale

Oral Ruling on Voir Dire #2

Counsel for the Crown:

C. Choi

T.C. Johnson

Counsel for the Accused Fabian Cuthbert:

J.C. LeBlond

Counsel for the Accused Ravneet Basi:

D.E.M. Jenkins, Q.C.

Place and Date of Trial:

Prince George, B.C.

August 19 - 22, 2019;

August 26 - 29, 2019;

September 3 - 5, 2019;

September 10, 2019

Place and Date of Judgment:

Prince George, B.C.

September 5, 2019

[1] THE COURT: Fabian Fraser Cuthbert challenges the sufficiency of the Informations to Obtain ("ITO") for the following warrants:

- 1) the July 2, 2015, tracking warrant, along with the ITO, which has been marked as Exhibit 2;
 - 2) the October 28, 2015, tracking warrant, along with the ITO for that warrant, which has been marked as Exhibit 3; and
 - 3) the November 9, 2015, general warrant, along with its ITO, which has been marked as Exhibit 4.
- [2] On August 29, 2019, I dismissed Mr. Cuthbert's applications and I indicated that I would provide reasons in due course and these are those reasons.

Position of the Parties

- [3] Mr. Cuthbert argues that the various ITOs were not sufficient for the authorization of the two tracking warrants and the general warrant because the various conclusions of Constable Halliday, the affiant, were not reasonable, nor were they based on the appropriate factual foundation.
- [4] Mr. Cuthbert argues that with regard to the various confidential informants, much of the information regarding their pedigrees was vetted from the ITOs. Also, there was no specific information with regard to the various informants' drug and alcohol use.
- [5] Mr. Cuthbert argues that there was contradictory information from the various informants. For example, Informant A provided information that Mr. Cuthbert was trafficking in methamphetamine, marihuana, and cocaine in November 2014, while Informant B provided information that Mr. Cuthbert was selling cocaine, heroin, and crystal meth.

- [6] Mr. Cuthbert also argues that throughout the various ITOs there are comments from the confidential informants that he is selling cocaine or continuing to sell cocaine. Mr. Cuthbert argues that it is not clear whether these comments are based on new information or if these references are simply assumptions of Constable Halliday.
- [7] Mr. Cuthbert argues that Constable Halliday draws many conclusions which are not based on facts. For example, in Exhibit 2 at paragraph 55.10, it states "Fabian Cuthbert uses multiple cell phones to make drug deals and will talk and/or text dirty on the phone". This statement comes from the June 23, 2015 surveillance where members of the RCMP saw Mr. Cuthbert with two phones during a meeting with a known drug trafficker. The drug trafficker was not identified in these paragraphs.
- [8] Mr. Cuthbert also argues that there are various references to "heat checks" in the ITOs, which are not supported by the surveillance evidence. For example, in Exhibit 2 at paragraph 60.4, it states "Cuthbert's driving patterns were consistent with someone who was doing 'heat checks' in attempt to evade or detect surveillance". Mr. Cuthbert argues that there were no descriptions of his driving which would provide a foundation for that conclusion.
- [9] Mr. Cuthbert argues that there is insufficient information regarding the nature of the surveillance for Constable Halliday to draw any conclusions as to whether short duration stops occurred or whether people coming and going from Mr. Cuthbert's residence was indicative of drug trafficking. For example, in Exhibit 2 at paragraph 61.1, it states:

There were a total of eight vehicles observed coming and going from Cuthbert's Residence throughout the duration of the surveillance. Two of these vehicles made short duration stops at Cuthbert's Residence.

- [10] Mr. Cuthbert argues there is no information as to what the duration of the surveillance period was. Were these vehicles observed over a period of two hours or 24 hours? In addition, there is no description given so that the authorizing justice could determine if there were in fact short duration stops.
- [11] Mr. Cuthbert argues that Constable Halliday concludes that these observations are consistent with drug trafficking when there is no foundation to draw that conclusion.
- [12] Mr. Cuthbert also argues that Constable Halliday concludes, from relatively benign activities that these activities are consistent with drug trafficking and/or counter-surveillance.
- [13] For example, in Exhibit 2 at paragraph 63.2, there is an incident described on April 23, 2015, where Mr. Cuthbert and Mr. Robinson are flying a drone in an open field. In addition, at paragraph 63.3, Mr. Cuthbert and Mr. Robinson were observed intently watching passing vehicles. Constable Halliday concludes from the surveillance that Mr. Cuthbert and Mr. Robinson were trying to detect police surveillance and that drones are used as a means to transport quantities of drugs, as well as to conduct counter-surveillance.

- [14] Mr. Cuthbert argues there is no factual foundation to draw these conclusions from.
- [15] Mr. Cuthbert argues that another example of a relatively benign activity which Constable Halliday concludes is related to drug trafficking is with regard to an incident that occurred on May 14, 2015 where Mr. Cuthbert, Mr. Robinson, and Mr. Blize were seen walking out of Mr. Cuthbert's residence onto the street and having a serious discussion. From that, Constable Halliday concluded that this was consistent with drug traffickers discussing their business in a more secure location, which is often referred to as a "walk and talk".
- [16] Mr. Cuthbert argues that Constable Halliday's conclusion is inconsistent with what was observed because going into the street to have a discussion does not equate to going to a more secure location.
- [17] Mr. Cuthbert also makes a similar argument with regard to paragraph 86.8 of Exhibit 2 in relationship to a June 26, 2015 meeting between Mr. Cuthbert, Dana Cuthbert, and Mr. Blize, where Constable Halliday concluded that they had a brief "walk and talk" with no other description of what occurred.
- [18] Mr. Cuthbert argues that in Exhibit 2 at paragraph 83.5, Constable Halliday concludes that Rick Chavarie is a long-time kilogram-level drug trafficker in Quesnel. Mr. Cuthbert argues that there is no factual basis for an authorizing justice to determine whether this is accurate information or not.
- [19] Mr. Cuthbert also argues that Constable Halliday takes simple observations and concludes that a drug transaction must have occurred from them. For example, in Exhibit 2 at paragraph 83.7, Constable Halliday concludes that a weighted brown paper bag handed by Mr. Chavarie to Mr. Robinson contained a stack of money and was part of a drug transaction.
- [20] Mr. Cuthbert makes similar arguments with regard to Exhibits 3 and 4 specifically, as the ITOs in those exhibits have many of the same corresponding paragraphs to the ITO for Exhibit 2.
- [21] Mr. Cuthbert argues there is no foundation for many of the conclusions in the exhibits. For example, in Exhibit 3 at paragraph 65.1, it states "Cuthbert has a stash house in the Lower Mainland where he receives drugs to be brought to Prince George". Mr. Cuthbert argues there is no factual foundation for that conclusion.
- [22] Mr. Cuthbert argues that there are many examples in the ITOs where either himself or another person has a bag, or an object, such as a white tin or a white plastic shopping bag, where Constable Halliday concludes that these items contained cocaine, even though no cocaine or drugs were seen.

- [23] Mr. Cuthbert argues that there is irrelevant information in the ITOs. For example, in Exhibit 3 at paragraphs 116 - 116.3, there is information from a probation officer with regard to her client Kenneth Nolan's comments that Mr. Cuthbert is the richest drug dealer in Prince George and owns an island. Also, that Mr. Cuthbert flew drones over the Combined Forces Special Enforcement Unit office. Mr. Cuthbert says there is absolutely no corroboration as to any of these comments or whether these events occurred.
- [24] Mr. Cuthbert emphasizes that there is no factual basis for many of the conclusions drawn by Constable Halliday. Mr. Cuthbert argues that many of the identified paragraphs in Exhibit 2, 3, and 4 should be given less weight, because they are conclusions drawn by Constable Halliday without any foundation.
- [25] Mr. Cuthbert did concede that he was not arguing investigative necessity on this application with regard to these warrants.
- [26] Mr. Cuthbert argues that with regard to Exhibit 4, there is no factual nexus between the information provided by the confidential informants or through surveillance that there was drug trafficking occurring in the Chilliwack apartment. Mr. Cuthbert argues that there is no information that the items which Constable Halliday deposed would be at Mr. Cuthbert's apartment would in fact be there.
- [27] Mr. Cuthbert argues that there is no information to suggest that there was drug repackaging or packaging occurring in the apartment in Chilliwack.

The Crown

- [28] The Crown argues that with regard to Exhibits 2 and 3, the tracking warrants, the standard to be applied is whether the affiant has shown that there are reasonable grounds to suspect that an offence has been or would be committed, and that information relevant to the commission of the offence could be obtained through the use of the tracking device. That is to say, the test is one of reasonable suspicion, which is an extremely low standard.
- [29] The Crown argues that tracking warrants, like any other judicially pre-authorized order is presumed to be valid.
- [30] The Crown argues that in determining whether there was sufficient information before the authorizing justice, all of the information has to be assessed in the totality of the circumstances.
- [31] The Crown argues that with regard to the tracking warrants, an innocent explanation for a particular incident does not invalidate it.
- [32] The Crown argues that there are ample grounds for all of the orders that issued in this case.
- [33] The Crown argues that the individual informants corroborate one another in a number of areas.

- [34] For instance, Informant A stated that Mr. Cuthbert was a drug dealer and this was corroborated by Informant B and a Crime Stoppers' tip.
- [35] The Crown argues that the informants' pedigrees were set out in the ITOs and all of the informants, with the exception of Informant F, have proven reliable in the past.
- [36] The Crown argues that it is important to look at the totality of the evidence, particularly with regard to the surveillance evidence outlined in the ITOs. The Crown argues that with regard to short duration stops, it is suspicious when eight to 10 people attend at a residence individually, no matter what the time frame is.
- [37] For example, in Exhibit 2 in relationship to surveillance that occurred in May 2015, at paragraph 77.8, it is described that Mr. Sookhansingh arrived at Mr. Cuthbert's residence and stayed for approximately eight minutes. He had a bag which he covered up in the rear seat of the vehicle before leaving. He then returned to the residence again only seven minutes later.
- [38] Also in paragraph 77.8.4, Constable Halliday states:
- At 6:13 p.m. a Yellow Taxi Cab van arrived at Cuthbert's Residence. A male believed to be Blize gave something to the taxi cab driver through the passenger window and the taxi immediately departed.
- [39] The Crown argues that these are two examples of suspicious activity at the Cuthbert residence.
- [40] The Crown argues that with regard to "walk and talks", it is suspicious for three individuals to walk out of the Cuthbert residence, have a three-minute intense conversation, and then walk back into the residence.
- [41] The Crown argues that with regard to "heat checks", the totality of the evidence has to be considered. There are many examples in the ITOs describing specific and unusual driving patterns by Mr. Cuthbert and other targets of the investigation.
- [42] The Crown argues that in Exhibit 2, beginning at paragraph 83, Constable Halliday discloses surveillance from June 23, 2015. On this occasion, Mr. Cuthbert as well as Mr. Robinson travelled southbound on Highway 97 from Mr. Cuthbert's residence. Mr. Sookhansingh also departed from Mr. Cuthbert's residence in a different vehicle and followed Mr. Cuthbert. Mr. Cuthbert stopped at a gas station and met with Mr. Chavarie, while Mr. Sookhansingh parked his vehicle across the street from Mr. Cuthbert's location and waited there until Mr. Cuthbert and Mr. Robinson left.
- [43] During this meeting Mr. Chavarie gave Mr. Robinson a weighted brown paper bag. After they left, Mr. Sookhansingh followed Mr. Cuthbert and Mr. Robinson back to Mr. Cuthbert's residence.

- [44] The Crown argues this is an example of counter-surveillance and "heat checks" which the authorizing justice could rely on.
- [45] The Crown argues that there has not been established that there are any material errors found in the ITOs.
- [46] The Crown argues that with regard to the tracking warrants, initially the tracking warrant was installed on the blue GMC. It was then later observed by the police that Mr. Cuthbert acquired or was driving a black Dodge Ram pick-up truck.
- [47] The Crown argues that there can be no serious suggestion that there was not a reasonable suspicion that Mr. Cuthbert was possibly involved in drug trafficking or that the tracking device would not assist in the investigation.
- [48] The Crown argues that with regard to Exhibit 4, which is the general warrant, the standard for authorization of such a warrant requires reasonable grounds to believe that an offence has been or will be committed and that the information concerning the offence will be obtained through the use of a particular technique.
- [49] The Crown argues that by November 2015, surveillance had shown that there was apparent drug activity at Mr. Cuthbert's residence which were followed by Mr. Cuthbert's attendances at his apartment in Chilliwack.
- [50] There was both confidential informant information, as well as police surveillance evidence that Mr. Basi was meeting with Mr. Cuthbert.
- [51] The Crown argues that there is a nexus between the suspected "stash apartment" and the larger pattern of apparent drug trafficking that was seen by the police.
- [52] The Crown argues that paragraphs 141 - 141.7 in Exhibit 4 provides compelling information and a factual nexus for the issuance of a general warrant to search Mr. Cuthbert's apartment in Chilliwack. In particular, Informant A gave information that Mr. Cuthbert receives his drugs at the "stash house" that are to be brought to Prince George. Informant D stated that Mr. Cuthbert's cocaine is cut and re-bricked, and Informant B provided information that Mr. Cuthbert represses his cocaine before he resells it.

Decision

- [53] Mr. Cuthbert challenges the validity of two tracking warrants and a general warrant which were authorized in this investigation. Mr. Cuthbert says that there was not a sufficient basis provided in the ITOs which are found in Exhibits 2, 3, and 4 in this proceeding to authorize these warrants.
- [54] I will first summarize the law with regard to the review of tracking warrants and general warrants.

[55] In *R. v. Perkins*, 2018, in discussing the test on a review of a judicial authorization, Ehrcke J. stated the following at paragraph 3:

The test on a review such as this one was summarized by Frankel J.A. in *R. v. Whitaker*, 2008 BCCA 174, at para. 43:

[43] When a judicial order authorizing a search or seizure is challenged at trial, the trial judge's role is to determine whether the order could have been granted. This determination is made based on the record which was before the authorizing judicial officer as amplified on the review: *R. v. Araujo*, [2000] 2 S.C.R. 992, 2000 SCC 65 at para. 51. As succinctly stated by Madam Justice Rowles in *R. v. Al-Maliki*, 2005 BCCA 157, 201 C.C.C. (3d) 196, "[t]he test is whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued, not whether, in the opinion of the reviewing judge, the application should have been granted at all by the authorizing judge": para. 19.

[56] Section 492.1 of the Criminal Code authorizes tracking warrants and reads as follows:

492.1 (1) A justice or judge who is satisfied by information on oath that there are reasonable grounds to suspect that an offence has been or will be committed under this or any other Act of Parliament and that tracking the location of one or more transactions or the location or movement of a thing, including a vehicle, will assist in the investigation of the offence may issue a warrant authorizing a peace officer or a public officer to obtain that tracking data by means of a tracking device.

[57] The reasonable suspicion standard was discussed by the Supreme Court of Canada in *R. v. Chehil* 2013 SCC 49 at paragraph 27:

Thus, while reasonable grounds to suspect and reasonable and probable grounds to believe are similar in that they both must be grounded in objective facts, reasonable suspicion is a lower standard, as it engages the reasonable possibility, rather than probability, of crime. As a result, when applying the reasonable suspicion standard, reviewing judges must be cautious not to conflate it with the more demanding reasonable and probable grounds standard.

[58] The court in *Chehil* went on to say the following at paragraph 33:

Exculpatory, neutral, or equivocal information cannot be disregarded when assessing a constellation of factors. The totality of the circumstances, including favourable and unfavourable factors, must be weighed in the course of arriving at any conclusion regarding reasonable suspicion. As Doherty J.A. found in *R. v. Golub* (1997), 34 O.R. (3d) 743 (Ont. C.A.), at p. 751, "[t]he officer must take into account all information available to him and is entitled to disregard only information which he has good reason to believe is unreliable". This is self-evident.

[59] Section 487.01 of the Criminal Code is the relevant provision with regard to a judicial authorization of a general warrant and it reads as follows:

487.01 (1) A provincial court judge, a judge of a superior court of criminal jurisdiction or a judge as defined in section 552 may issue a warrant in writing authorizing a peace officer to, subject to this section, use any device or investigative technique or procedure or do any thing described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property if

- (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.

[60] The British Columbia Court of Appeal in *R. v. Jir*, 2010 BCCA 497, summarizes the law in relationship to the reasonable grounds standard at paragraph 27:

As has been stated many times, the "reasonable grounds" standard is not only less than that required for conviction, but is also less than the civil standard of proof. Madam Justice Wilson put it this way in *R. v. Debot*, [1989] 2 S.C.R. 1140 at 1166, 52 C.C.C. (3d) 193:

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.

More recently, in *Mugesera v. Canada (Minister of Citizenship & Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100, 197 C.C.C. (3d) 233, the Court stated (at para. 114):

. . . the "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities [citations omitted].

Further, as Mr. Justice Hill noted in *R. v. Sanchez* (1994), 93 C.C.C. (3d) number 357 at 367 (Ont. Ct. (G.D.)):

The appropriate standard of reasonable or credibly based probability envisions a practical, non-technical and common sense probability as to the existence of the facts and inferences asserted.

[61] During the course of the submissions of Mr. LeBlond on behalf of Mr. Cuthbert argued that many of the paragraphs in the ITO should be given less weight because they had no factual basis or were vague. Upon a review of the ITOs, I agreed that the following paragraphs should be given less weight:

- i. Exhibit 2, paragraph 55.10 (the corresponding paragraphs for Exhibit 3 are paragraph 66.10, and Exhibit 4 is paragraph 62.10), because there was no information as to who the "known drug trafficker" was;
 - ii. Exhibit 2, paragraph 66.4 (the corresponding paragraphs of Exhibit 3 are paragraph 72.4, and Exhibit 4 paragraph 68.4), because there is no description of Mr. Cuthbert's driving patterns which would allow the conclusion that there was a "heat check" being done;
 - iii. Exhibit 2, paragraph 63.2 (the corresponding paragraphs of Exhibit 3 are paragraph 75.2, and Exhibit 4 is paragraph 71.2) because it is not apparent what the relevance to Constable Halliday's statement regarding the use of drones by criminals is in the context of the surveillance evidence is.
 - iv. Exhibit 2, paragraph Exhibit 86.8 (the corresponding paragraphs in Exhibit 3 are 98.8, and Exhibit 4 are 94.8) because there is insufficient evidence provided to conclude that there was a "brief walk and talk".
 - v. Exhibit 3, paragraphs 116.2 and 116.3 (the corresponding paragraphs in Exhibit 4 are 112.2 and 112.3) because there is no factual corroboration of the second-hand information received by Probation Officer Ms. Clark from Kenneth Nolan.
 - vi. Exhibit 3, paragraph 141.9 (the corresponding paragraphs in Exhibit 4 are 137.9) because again there is no description of what Mr. Cuthbert's driving pattern which would allow for the conclusion that there were multiple "heat checks" being done.
- [62] While I have found that relatively few of the paragraphs in the ITOs should be accorded less weight, it is clear in my view that the authorizing justice would have recognized the same issues on these paragraphs that I have.
- [63] It is also my view that Mr. Cuthbert has not established that there were any material non-disclosures or misleading information provided in any of the ITOs. There is no evidence that Constable Halliday did not provide full, fair, and frank disclosure in these ITOs.
- [64] Mr. Cuthbert challenges the sufficiency of the two tracking warrants and the general warrant, primarily because he argues that there is no factual basis in the foundation in the various ITOs.
- [65] Mr. Cuthbert argues that with regard to the confidential informants, the pedigree information is deficient because it has been significantly redacted. For example, there is no information regarding the drug and alcohol use of the various informants.
- [66] While I agree that there has been significant redaction of information relating to the confidential informants, there is also clear information that all of the informants used had provided reliable information in the past, with the exception of Informant F.

- [67] Mr. Cuthbert also argues with regard to the informant information, there is contradictory evidence between the various informants. For example, there is a difference in the information given by Informant A and Informant B as to what type of drugs Mr. Cuthbert was selling. In my view, the information given by Informant A and B is not contradictory. Both indicate that Mr. Cuthbert was selling cocaine. The fact that they also indicated Mr. Cuthbert was selling some different drugs is not, in itself, contradictory.
- [68] Mr. Cuthbert also argues that there is insufficient information to draw the conclusion that there were "heat checks" being done when the police were conducting surveillance of Mr. Cuthbert and other targets of the investigation. While I agree some examples in the ITOs do not provide enough information to conclude whether or not there were "heat checks" being done, for the significant part of the ITOs, there was a factual foundation to come to these conclusions.
- [69] There were multiple examples in the various ITOs of the vehicles driven by Mr. Cuthbert and other targets where they would, for instance, turn off the highway, drive down a rural road, and then turn right back onto the highway, or would drive in other suspicious manners.
- [70] For example, the July 17, 2015, surveillance discloses that vehicles driven by Mr. Blize, Mr. Cuthbert, and Mr. Sookhansingh, after a meeting, all travelled together westbound on Highway 16. All three vehicles followed each other in tandem and exited south onto Ferry Avenue. The three vehicles then branched off from one another; however, they ultimately met up and arrived at Mr. Cuthbert's residence, albeit via different routes.
- [71] Another example is the June 23, 2015, surveillance evidence of Mr. Cuthbert, Mr. Robinson, Mr. Chavarie, and Mr. Sookhansingh. Their driving patterns make it difficult to come to any other conclusion than that there were "heat checks" and counter-surveillance occurring.
- [72] Mr. Cuthbert also argues that Constable Halliday's conclusions that the transfer of packages such as brown paper bags, white plastic bags, a tobacco tin, luggage, and other items is not conclusive that there was drug trafficking occurring.
- [73] The difficulty with this argument is that Mr. Cuthbert is isolating individual paragraphs in the various ITOs without looking at the totality of the evidence provided in the ITOs.
- [74] In establishing whether or not there was reasonable suspicion or reasonable grounds, the totality of the information in the ITO in question has to be considered. The mere fact that there may be an innocent explanation for a particular incident does not, in itself, establish that a warrant should not have been authorized.
- [75] Mr. Cuthbert, as well as his mother and other targets of the investigation, made numerous trips to the Lower Mainland where there were packages being taken into Mr. Cuthbert's apartments, for instance. There were numerous instances of surveillance on Mr. Cuthbert's residence in Prince George where multiple parties would attend at his residence for short periods of time. I agree with the Crown that, given the number of attendances by people at Mr. Cuthbert's residence, it is not particularly significant what the actual duration of any

particular surveillance period was. It is also noteworthy that after the trips by Mr. Cuthbert to the Lower Mainland, there would be a flurry of activity at his residence when he returned, in the form of individuals coming and going from his Prince George home.

- [76] There are instances where, for instance, a taxi would drive up to Mr. Cuthbert's residence and something would be handed to the taxi driver and he would leave.
- [77] The surveillance evidence, in conjunction with the evidence given by the confidential informants, clearly provides a foundation for not only suspicion, but reasonable grounds to believe that drug trafficking was occurring.
- [78] With regard to Exhibit 2, the tracking warrant of July 2, 2015, the ITO clearly establishes that Mr. Cuthbert owned or frequently used the vehicles which form the subject of the authorization. Informants A, B, and C all provided information to the police in the past that had resulted in the seizure of drugs or cash.
- [79] Informants A and B provided ongoing information that Mr. Cuthbert was selling cocaine, among other drugs. I do not accept Mr. Cuthbert's argument that it is not clear whether the informant information was old and was being recycled by Constable Halliday or whether it was new information. Each instance with regard to the informant information that was given was clearly identified as being on a specific and different dates from the previous information in the ITOs.
- [80] Based on the totality of the circumstances outlined in the ITO which forms part of Exhibit 2, I find that the requirements for the authorization of the July 2, 2015, tracking warrant were met.
- [81] The October 28, 2015, tracking warrant was required because Mr. Cuthbert obtained a new vehicle, which was the Dodge pick-up truck. The ITO contained in Exhibit 3 relies on much of the information that was found in the ITO in Exhibit 2; however, there was additional confidential informants who provided information to the police, those being Informants D, E, and F. Both Informants D and E had provided information in the past to the police which resulted in the authorization of a search warrant in the case of Informant D, and search warrants being executed with drugs seized and persons charged in the case of Informant E.
- [82] Informant F had provided information to police in the past. However, as I said, that information had not resulted in police enforcement or charges being laid.
- [83] The information from the confidential informants included that Mr. Cuthbert was continuing to sell cocaine, that he would transfer cocaine from the Lower Mainland to Prince George with the assistance of others, and that he was supplied cocaine from Mr. Basi.
- [84] The police conducted additional surveillance on Mr. Cuthbert, as well as Mr. Basi, in the Lower Mainland. Informant F provided information that Mr. Basi is a cocaine trafficker and sells kilograms of cocaine.

- [85] The police were also provided information that Mr. Cuthbert had a stash house in the Lower Mainland. It was confirmed through surveillance that Mr. Cuthbert had an apartment in Chilliwack, as well as the fact that numerous trips were taken to that apartment by him, including on October 15, 2015. During that trip, Kay Cuthbert and Ms. Olson left the apartment in the Lower Mainland in one vehicle, and Mr. Cuthbert left in another vehicle. They travelled to Prince George; however, neither of these vehicles met up with one another during the trip.
- [86] Based on the totality of the circumstances outlined in the ITO in Exhibit 3, in my view, the requirements of the tracking warrant that was issued on October 28, 2015, were met.
- [87] Finally, with regard to the general warrant, there has to be reasonable grounds for the issuance of the warrant.
- [88] The ITO in Exhibit 4 provides much of the same information found in the ITOs in Exhibit 2 and 3. However, there is further information from confidential informants and additional surveillance. Particularly relevant to this application is the information from the following informants.
- 1) Informant A provided information that Mr. Cuthbert receives his drugs at the stash house that are to be brought to Prince George. There was surveillance by the police observing Mr. Basi meeting Mr. Cuthbert at his apartment in the Lower Mainland in August 2015;
 - 2) Informant B provided information in August 2015 that Mr. Cuthbert represses his cocaine before he resells it; and
 - 3) Informant D in March 2015 provided information that Mr. Cuthbert's cocaine is cut and re-bricked before it is resold.
- [89] Mr. Basi was seen on one occasion at a ferry terminal waiting for Mr. Weiers, who is a known drug trafficker. Mr. Basi had a short meeting with Mr. Weiers before leaving. Mr. Basi attended Mr. Cuthbert's apartment on two occasions. Mr. Cuthbert returned home to Prince George usually the next day after meeting with Mr. Basi.
- [90] This is in addition to the previous surveillance by the police on Mr. Cuthbert and other targets of the investigation, including the driving patterns by Mr. Cuthbert and other targets, the multiple trips to the Lower Mainland to Mr. Cuthbert's apartment, the exchanges of various packages, and the clear examples in the ITO of counter-surveillance being performed by Mr. Cuthbert and other targets. This information in my view provides reasonable grounds to believe that there would be drugs and paraphernalia, as set out in paragraph 143 of Exhibit 4, in Mr. Cuthbert's apartment in the Lower Mainland.
- [91] I find that the requirements for the issuance of the general warrant were met.
- [92] Mr. Cuthbert's applications are dismissed.

"The Honourable Mr. Justice Tindale"

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