

CANADA / JUDGMENT

R. v. Dill

2025 BCSC 1153

COURT

Supreme Court of British Columbia

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2025 BCSC 1153 R. v. Dill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dill,

2025 BCSC 1153

Date: 20250620

Docket: 93993

Registry: Kelowna

Regina

v.

Thomas Troy Dill

Before: The Honourable Justice Laurie

Reasons for Judgment on Voir Dires #4 and #5

Counsel for the Crown:

J.M. Le Dressay

Counsel for the Accused:

N. Selamaj

Place and Date of Hearing:

Kelowna, B.C.

June 2-5, 2025

Place and Date of Judgment:

Kelowna, B.C.

June 20, 2025

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Overview

- [1] The accused Thomas Troy Dill is charged with smuggling contrary to section 160 of the Customs Act, R.S.C., 1985, c.1 (2nd Supp.), firearm-related offences contrary to sections 95(1) and 92(2) the Criminal Code, R.S.C. 1985 c. C-46 [Criminal Code] and possession of controlled substances for the purpose of trafficking contrary to section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
- [2] In reasons indexed as 2025 BCSC 996, I addressed Mr. Dill's applications in voir dres 1 to 3 in respect of his rights pursuant to sections 8 and 10(b) the Canadian Charter of Rights and Freedoms (the "Charter"). The background facts related to the police investigation are described in those reasons and I won't repeat them in much detail here.
- [3] These reasons address additional applications filed by Mr. Dill pursuant to section 8 of the Charter, in respect of which further voir dres were held. In Voir Dire #4, Mr. Dill alleges that a search of a cell phone incident to his arrest was unlawful. In Voir Dire #5, Mr. Dill challenges the validity of the general warrant issued on January 13, 2022 on the basis that the requisite grounds for the named offence were not met.

- [4] Upon considering the evidence, submissions of counsel and the applicable law, for the following reasons, I have concluded that there were no violations of Mr. Dill's section 8 Charter rights as alleged.

Voir Dire # 4: Search of Cell Phone Incident to Arrest

- [5] By way of brief background, this investigation was commenced after a Border Services Officer ("BSO") at the Vancouver international Mail Centre examined a parcel that was shipped from China and addressed to Thomas Dill at unit 306-3623 Elliott Rd., West Kelowna, B.C. The parcel was found to contain two firearm suppressors or silencers which are prohibited devices under the Criminal Code.
- [6] Members of the Kelowna RCMP subsequently developed a plan to conduct a controlled delivery of the parcel. In this connection, on January 13, 2022, they obtained a general warrant that authorized, among other things, the replacement of the contents of the parcel with similar looking items, the installation of an alarm that would notify the investigators when the parcel has been opened, and entry into any location after activation of the alarm where there are reasonable grounds to believe the parcel is present.
- [7] On January 19, 2022 at approximately 11:05 a.m., an undercover operator delivered the parcel to Mr. Dill at the address indicated on the parcel ("Unit 306").
- [8] After being notified that the alarm had been activated, members of the Emergency Response Team ("ERT") entered Unit 306. They located Mr. Dill there and he was subsequently arrested. Another occupant, a female in her teens, identified as Sapheryn Blattnig, was also arrested.
- [9] It was in this context that the impugned search of the cell phone occurred.

Evidence of Staff Sergeant ("S/Sgt.") Kiehlbauch

- [10] S/Sgt. Desmond Kiehlbauch testified that he was the team commander for this investigation. On January 19, 2022, he was at the location of 3623 Elliott Road. At approximately 11:45 a.m., he received custody of Ms. Blattnig from an ERT member. He arrested Ms. Blattnig and informed her of her rights under the Charter. He stated that this occurred on the first floor of the building in proximity to where Mr. Dill was. Mr. Dill was in Cst. Martin's custody at the time.
- [11] S/Sgt. Kiehlbauch testified that he had previously dealt with Ms. Blattnig and he was aware that she was a young person. He decided to release Ms. Blattnig at the scene. He removed the zap straps from her wrists and retrieved a jacket for her from Unit 306 as it was cold and she was wearing a tank top. He asked Ms. Blattnig if she had a phone. He explained that he wanted Ms. Blattnig to have a way of contacting someone to pick her up.

- [12] According to S/Sgt. Kiehlbauch, Ms. Blattnig did not respond to his question, however Mr. Dill responded that he had Ms. Blattnig's phone. S/Sgt. Kiehlbauch then received a cell phone from Cst. Martin. He believed, based on what Mr. Dill stated, that the phone came from Mr. Dill's person.
- [13] S/Sgt. Kiehlbauch testified that in the circumstances he was unsure whether the phone belonged to Ms. Blattnig or Mr. Dill. If the phone belonged to Mr. Dill, he believed that it could contain evidence related to the investigation, for example, correspondence regarding ordering of the silencers. He testified that he wanted to ascertain the ownership of the phone to ensure that evidence would not be lost by releasing Mr. Dill's phone to Ms. Blattnig.
- [14] S/Sgt. Kiehlbauch asked Ms. Blattnig if she knew the password to the phone. Ms. Blattnig entered the password which unlocked the phone. S/Sgt Kiehlbauch testified that while this was a step in determining the ownership of the phone, it did not settle the issue for him as it was possible that Ms. Blattnig simply knew the password to Mr. Dill's phone. He remained concerned that the phone belonged to Mr. Dill.
- [15] S/Sgt. Kiehlbauch testified that he conducted a search of the phone incident to arrest. He first looked at the home screen to see if there was anything to indicate who the device belonged to. Seeing nothing that assisted on this issue, he looked in the photographs section of the phone. In this section, he observed multiple thumbnail size photos of what appeared to be kilogram bricks of cocaine. He also observed a thumbnail size photograph of what he believed was Mr. Dill's image. Upon clicking on this thumbnail, he was able to confirm that it was indeed a photograph of Mr. Dill.
- [16] At that point, S/Sgt. Kiehlbauch stopped his search of the phone. He testified that the photographs of bricks of cocaine and Mr. Dill led him to believe that the phone belonged to Mr. Dill. He explained that given his involvement in the investigation, he was familiar with Mr. Dill's criminal record which included convictions for drug trafficking. Further, he stated that in his experience, there was a close relationship between drug trafficking and firearm-related offences. On the other hand, he had no information that Ms. Blattnig was involved in drug trafficking. He testified that he searched the phone for approximately one minute.
- [17] S/Sgt. Kiehlbauch's notes for that day indicated the time of the search, that the phone on Mr. Dill was searched incidental to arrest "as he said it was Sapheryn's" and that the officer "saw pictures of bricks on cocaine". The following day, he added in his police statement that he also observed a photograph of Mr. Dill.
- [18] In cross-examination, the officer agreed that the investigation did not involve drug trafficking. He disagreed with the suggestion that he was looking for, or was interested in, incriminating evidence of drug trafficking.

- [19] He agreed that in attempting to ascertain the ownership of the cell phone, he did not access the settings, text messages, call logs or emails. He explained that in his view, the fastest way to ascertain ownership was to look at the photos. He agreed that the photos may not be determinative.
- [20] He disagreed with the suggestion that there was no need to search the phone at the scene. He explained that there was some urgency as Ms. Blattnig was being released. He did not want to seize something that belonged to her that was not required for the investigation.
- [21] He agreed that his notes did not state the duration of the search of the cell phone.

Legal Framework

[22] Based on R. v. Fearon, 2014 SCC 77, [2014] 3 S.C.R. 621 [Fearon], a search of a cell phone incident to arrest will comply with section 8 of the Charter where:

- (1) The arrest was lawful;
- (2) The search is truly incidental to the arrest in that the police have a reason based on a valid law enforcement purpose to conduct the search, and that reason is objectively reasonable. The valid law enforcement purposes in this context are:
 - (a) Protecting the police, the accused, or the public;
 - (b) Preserving evidence; or
 - (c) Discovering evidence, including locating additional suspects, in situations in which the investigation will be stymied or significantly hampered absent the ability to promptly search the cell phone incident to arrest;
- (3) The nature and the extent of the search are tailored to the purpose of the search; and
- (4) The police take detailed notes of what they have examined on the device and how it was searched.

See Fearon at para. 83.

Standing

- [23] Mr. Dill asserts a reasonable expectation of privacy over the cell phone and its contents based on the Crown theory that the cell phone belonged to him. The Crown concedes this point, and I am satisfied based on the Crown theory that Mr. Dill has the requisite standing to challenge the search of the cell phone pursuant to section 8 of the Charter: R. v. Jones, 2017 SCC 60, [2017] 2 S.C.R. 696.

Discussion

- [24] In applying the legal framework in *Fearon* to the evidence in this case, I am satisfied that the Crown has met its burden of demonstrating that the search of the cell phone conducted by S/Sgt. Kiehlbauch complied with section 8 of the Charter.
- (i) The arrest was lawful.
- [25] With respect to the first requirement in *Fearon*, the defence concedes that Mr. Dill's arrest was lawful and I am satisfied that the evidence amply supports this conclusion.
- (ii) The search is truly incidental to the arrest in that the police have a reason based on a valid law enforcement purpose to conduct the search, and that reason is objectively reasonable.
- [26] The crux of the defence argument relates to the second requirement in *Fearon*. Mr. Dill submits that none of S/Sgt. Kiehlbauch's purported justifications for searching the phone incident to arrest, in particular, identifying the owner, avoiding over-seizure, and gathering evidence of importation or trafficking, constituted a valid law enforcement purpose under *Fearon*.
- [27] The Crown argues that S/Sgt. Kiehlbauch's evidence as to why he searched the phone falls squarely within the valid law enforcement objective of preserving the evidence as recognized in *Fearon*. The Crown submits that the circumstances in which the officer encountered the cell phone were dynamic. Ms. Blattnig, a young person was going to be released. The accused indicated that a cell phone in his possession belonged to Ms. Blattnig which reasonably raised questions in the officer's mind. In the circumstances, the search of the phone to determine its ownership in order to preserve a potentially valuable repository of evidence related to the offence for which the accused had been arrested was truly incidental to the arrest.
- [28] Based on the evidence, I am satisfied that the search of the phone was truly incidental to the arrest of the accused, the search was conducted for a valid law enforcement purpose, and the reason for the search was objectively reasonable.
- [29] I will first address the defence characterization of S/Sgt Kiehlbauch's evidence. In particular, it is asserted that one of the reasons the officer searched the phone at the scene was to gather evidence for the offence of importation of prohibited device and / or drug trafficking.
- [30] In my view, this characterization is not supported by the officer's evidence. While S/Sgt. Kiehlbauch associated evidence of drug trafficking (i.e. the photographs of cocaine bricks) with Mr. Dill's ownership of the phone, his evidence was not that he was searching the phone to gather incriminating evidence, rather it was to ascertain ownership of the phone.

- [31] I accept the officer's evidence that his purpose in ascertaining ownership of the phone was to attempt to preserve evidence that may be contained in Mr. Dill's phone related to the offence for which he had been arrested. I accept that releasing the phone to Ms. Blattnig risked losing potentially valuable evidence.
- [32] Further, I do not accept the defence submission that S/Sgt. Kiehlbauch agreed that there was no imminent reason to search the cell phone at the scene. To the contrary, the officer testified that there was some urgency in ascertaining the ownership of the phone given that Ms. Blattnig was going to be released.
- [33] In my view, the defence argument to the effect that determining ownership of the phone and avoiding the unnecessary seizure of what might be Ms. Blattnig's phone are not valid law enforcement objectives under Fearon fails to recognize the entirety of the evidence and the context in which the search occurred. It is clear from S/Sgt. Kiehlbauch's evidence that these concerns were related to his overarching concern which was to prevent the potential loss of evidence resulting from releasing Mr. Dill's cell phone to Ms. Blattnig.
- [34] Finally, the defence also argues that instead of searching the cell phone at the scene, the police could have simply seized the phone and obtained a search warrant to search its contents at a later time.
- [35] I do not accept this submission, nor do I consider it to be a reasonable suggestion in the particular circumstances that S/Sgt. Kiehlbauch was faced with. Further, in my view, this approach is inconsistent with the purpose of the legal framework in Fearon which aims to strike a balance between important law enforcement objectives on the one hand and the very significant privacy interests at stake in cell phone searches on the other: Fearon at para. 74.
- [36] The question here is not whether a search warrant was an available investigative avenue (and I make no determination on this issue) but whether the search was conducted for a valid law enforcement purpose, i.e. to preserve evidence related to the offence for which the accused was arrested. Considering the totality of the evidence, I conclude that it was.
- (iii) The nature and the extent of the search are tailored to the purpose of the search.
- [37] Based on the evidence, I am also satisfied that the nature and extent of the search conducted by S/Sgt. Kiehlbauch were tailored to the purpose of the search. The search of the cell phone was brief, cursory and focused. The officer only accessed the photographs section of the phone. The search lasted only a minute. After viewing images of cocaine and a photograph of Mr. Dill and being satisfied that the cell phone belonged to Mr. Dill, S/Sgt. Kiehlbauch suspended his search of the phone.
- (iv) Detailed notes of what was examined on the device and how it was searched.

- [38] With respect to the last requirement in *Fearon*, the defence submits that the officer's notes fall short of what is constitutionally required because it did not document the duration of the search.
- [39] The Crown submits that in the context of S/Sgt. Kiehlbauch's cursory search of the phone, the brief duration of the search is implied from his notes.
- [40] In *Fearon*, the Court held that officers must make detailed notes of what they have examined on the cell phone. The Court explained that the record should generally include the applications searched, the extent of the search, the time of the search, its purpose and its duration. The Court stressed the importance of after-the-fact judicial review in cases involving a search incident to arrest. The notes assist in having a clear picture of what was done which is important to an effective review: para. 82.
- [41] The Court also emphasized that the burden on the Crown to establish that the search of a cell phone incident to arrest was lawful would not be met absent detailed evidence about precisely what was searched, how and why: *Fearon* at para. 87 (emphasis added).
- [42] In my view, the overarching question is whether the officer's notes are sufficient to permit a meaningful after-the-fact review of the lawfulness of the search. Generally, courts have employed a contextual approach to the content and level of detail required to meet this standard.
- [43] For example, in *R. v. Emery*, 2019 BCSC 702, although the officer did not take detailed notes of what he examined on a cell phone, the photographs that he took of what he examined were found to be sufficient for the purpose of documenting what he examined and how he examined it: para. 96.
- [44] In *R. v. Green*, 2022 MBQB 37, the police did not note the precise time that they opened a Dropbox application in a cell phone although they took many photographs of the content that they accessed. In addressing a defence argument that the police failed to document every aspect of their search, the Court noted that there is no authority suggesting that the police must be held to a standard of perfection. Considering the short time that the police spent conducting a cursory search of the phone and the many photographs taken, the documentation was "more than reasonable, although admittedly imperfect". The Court concluded that the requirement in *Fearon* for "detailed notes" was met. See para. 65.
- [45] In *R. v. Somerville*, 2020 ONSC 577, although the officer did not make accurate notes of the search, the Court found that his handling and search of the phone was so brief, so focused and so limited that contemporaneous notes would not greatly assist in an after-the-fact judicial review. The essence, detail and extent of the search was captured by the screen shots that were taken by the police. In the circumstances, the Court was satisfied that it had a complete record sufficient to conduct a meaningful judicial review and the failure of the officer to take detailed, precisely contemporaneous notes did not offend the principles in *Fearon*. See para. 20.

- [46] Similarly, in *R. v. Greensword*, 2023 ONSC 1815, the officers' notes which were "somewhat brief" but did "make clear that it was only texts related to the drug transaction that were searched", coupled with photographs taken of what was reviewed, were found to be sufficient documentation of the nature of the search: para. 58.
- [47] In the context of this case, given the cursory and limited nature of the search, I find that S/ Sgt Kiehlbauch's brief notes are sufficient to permit a meaningful judicial review of the search. His notes and police statement disclosed the time of the search (12:05), the broad reason for the search ("phone on Dill" and "he said it was Sapheryn's"), the legal basis relied upon ("search incidental to arrest"), and what was reviewed ("saw pictures of bricks of cocaine" and photo of Mr. Dill). In addition, one of the photos showing a brick of cocaine and the photograph of Mr. Dill was tendered in the voir dire.
- [48] In this context, I agree with the Crown's submission that the brief duration of the search is implicit in the content of the notes. In any event, although it would have been better if the notes contained more detail, I am satisfied in the particular context of this case, that the evidence was sufficient to establish "what was searched, how and why": Fearon at para. 87.

Voir Dire #5: Validity of the General Warrant

- [49] In Voir Dire #5, Mr. Dill advances two main arguments attacking the validity of the general warrant. First, he argues that on a Garofoli review, the warrant could not have issued as the requisite grounds to support the belief that the offence of unauthorized importing of a prohibited device was or will be committed were not met. Second, he alleges that the police used a ruse to ensure Mr. Dill's presence at the target residence for the purpose of the planned controlled delivery and that this raised concerns regarding whether the "best interests of the administration of justice" requirement under s.487.01(1)(b) was met. Further, it potentially undermined the integrity of the warrant process.

Reasonable grounds to support the named offence

- [50] Mr. Dill argues that the Information to Obtain ("ITO") filed in support of the general warrant disclosed no objective basis to support reasonable grounds to believe that the offence of unauthorized importing of a prohibited device was or would be committed. In this connection, Mr. Dill asserts that paragraphs 25(f) and 28 of the ITO should be excised.
- [51] In paragraph 25, the affiant Cst. Riley deposed that on January 10, 2022, he read a report written by Border Services Officer (BSO) Freeland. Through this report, Cst. Riley learned about the circumstances of BSO Freeland's examination of the parcel that was said to contain two firearm suppressors, described in the sub-paragraphs.
- [52] The impugned sub-paragraph 25(f) states:

Freeland opened the parcel to verify the contents. Within the parcel, Freeland verified the contents to be two (2) firearm suppressors with internal filters, believing these to be a device designed or intended to muffle or stop the sound or report of a firearm, contrary to Section 84(1) of the Criminal Code.

[53] In paragraph 28, the affiant deposed:

On January 11, 2022, I spoke with Cst. Gian Millette ("Cst. Millette") of the Kelowna RCMP Drugs & Organized Crime Unit. I requested Cst. Millette review photos of the suspected suppressors as provided by MacPherson from CBSA seizure report #8092-22-0004. From my conversation with Cst. Millette, I learned the following:

- a. Cst. Millette is a hunter and target shooter and has owned and recreationally used a selection of non-restricted, restricted and prohibited firearms.
- b. Cst. Millette is a Master Corporal in the infantry and has been in the Canadian Armed Forces for fifteen (15) years. Cst. Millette is a qualified firearms instructor, small arms coach and weapons detachment commander and has received foreign weapons training.
- c. Cst. Millette has been with the RCMP for thirteen (13) years and is a Certified Firearms Analyst. This designation entailed a five (5) day course in identifying and firing a wide selection of firearms and prohibited devices including suppressors.
- d. Cst. Millette believed the suspected suppressors from CBSA seizure #8092-22-0004 were prohibited devices as defined in Section 84(1) of the Criminal Code; and
- e. Cst. Millette believes these suspected suppressors are designed or intended to muffle or stop the sound or report of a firearm.

[54] The arguments for excision advanced by Mr. Dill are:

- a) The statement in sub-paragraph 25(f) that BSO Freeland "verified" the items contained in the parcel as firearm suppressors was "fatally conclusory" as the ITO provided no factual basis to support this statement. In particular, there was no information about BSO Freeland's qualifications or experience related to how he was able to form the belief that the items were firearm suppressors.
- b) The statement from Cst. Millette in paragraph 28 that the items were silencers suffered from the same deficiency because the ITO did not contain sufficient information regarding Cst. Millette's experience to make that determination. Further, it is problematic that Cst. Millette did not physically inspect the items.
- c) It is submitted that the issuing judge had no basis to assess the reliability of the assertions in the impugned paragraphs that the items in the parcel were firearm suppressors or silencers.
- d) These deficiencies are compounded by a material omission on the part of the affiant. It is alleged in this connection that while the affiant included in the ITO four out of 14 photographs taken by BSO Freeland of the parcel and its contents, the affiant did not include

a pair of photographs that depicted a silencer with a hole on one end but was closed on the other end. The pair of photographs which has been reproduced onto a single page was marked as Exhibit B in this voir dire. As I understand the defence submission, Exhibit B raises a question regarding whether the items were indeed silencers as it appears that a bullet could not go through the item. Further, it is submitted that if Exhibit B had been disclosed to the issuing judge, the judge could not have been satisfied that the parcel contained silencers and therefore the requisite grounds to believe that the offence of importing a prohibited device could not have been met.

- [55] I granted the defence leave to cross-examine the affiant with respect to this alleged material omission. During the cross-examination, Cst. Riley agreed that Exhibit B was one of the 14 photographs received from BSO Freeland. He agreed that he did not physically inspect the silencers. He did not agree with the suggestion that the item shown in Exhibit B could not be a functioning silencer. Cst. Riley testified that the closed end of the silencer could easily be "drilled out". He did not agree with the suggestion that Exhibit B detracted from the belief that the item was a silencer.
- [56] The defence also argues that there was no basis in the ITO upon which the issuing judge could be satisfied that Mr. Dill knew that the parcel contained silencers since the items were declared to be "LED tubes".

Governing Law and Legal Principles

- [57] Section 487.01(1) of the Criminal Code sets out the statutory preconditions for the issuance of a general warrant:

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.

- [58] The test to be applied in reviewing the validity of a general warrant is the same test that applies to a review of a search warrant, i.e. whether the material filed in support of the warrant, as amplified on review, provides some basis upon which the issuing justice could have granted the warrant. The reviewing judge's role is not to decide whether or not he or she would have granted the warrant, but whether the issuing justice could have done so based on the facts set out in the ITO. The question is whether there was at least some evidence that might reasonably be believed on the basis of which the warrant could have issued: *R. v. Araujo*, 2000 SCC 65, [2002] 2 S.C.R. 992 at paras. 51-52; *R. v. Al-Maliki*, 2005 BCCA 157 at paras. 13-15, 19; *R. v. Vu*, 2013 SCC 60, [2013] 3 S.C.R. 657 at para. 16.
- [59] The reasonable grounds standard is a practical, non-technical, common sense threshold requiring facts that are capable of demonstrating credibly-based probability: *R. v. Whitaker*, 2008 BCCA 174 [Whitaker] at para. 42. The test does not require proof beyond a reasonable doubt or a balance of probabilities: Whitaker at paras. 39-40; *R. v. Sadikov*, 2014 ONCA 72 [Sadikov] at para. 81. The analysis must be based on the totality of the evidence involving an assessment of all of the grounds taken together as opposed to a piecemeal analysis of each individual piece of evidence: Whitaker at para. 41.
- [60] A facial challenge attacks the sufficiency of the ITO based only on the information it contains. In order for a facial challenge to succeed, the ITO must disclose no basis upon which the authorizing judge could have issued the warrant: *R. v. Donovan*, 2025 BCCA 30 [Donovan] at para. 89.
- [61] A sub-facial challenge turns on what the affiant knew or ought to have known at the time the ITO was sworn; the accuracy of the ITO is tested against the affiant's reasonable belief at that time. If the applicant establishes that the affiant knew or should have known that the evidence was false, inaccurate or misleading, that evidence should be excised from the ITO when determining whether the warrant was lawfully issued. Similarly, if there was additional evidence the affiant knew or should have known and included in the ITO in order to make full, fair and frank disclosure, that evidence may be added when determining whether the warrant was lawfully issued: *World Bank Group v. Wallace*, 2016 SCC 15, [2016] 1 S.C.R. 207 at para. 121.
- [62] An affiant has an obligation to provide full, fair and frank disclosure of material facts: *Araujo* at para. 46; *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253 at para. 44. Materiality does not include every fact that might possibly be relevant, but refers to a matter that bears on the merits or substance of the application: *R. v. Nguyen*, 2011 ONCA 465 [Nguyen] at para. 51; *R. v. Montgomery*, 2016 BCCA 379 [Montgomery] at para. 98.
- [63] It is trite law that an affiant cannot simply recite conclusory statements that are material to the application without setting out any factual underpinning allowing the issuing justice to evaluate the factual basis for the conclusion: *R. v. Sunner*, 2017 BCSC 2445 at para. 31.

- [64] A warrant review is not a trial and must not take on the trappings of a trial in which the truth of the allegations contained in the indictment is explored. Nor is it the reviewing judge's role to draw inferences, or to prefer one inference over another. The inquiry begins and ends with an assessment of whether the amplified record contains reliable evidence that might reasonably be believed on the basis of which the warrant could have issued: Sadikov at paras. 86, 88; R. v. Slemko, 2020 BCCA 207 at para. 53.
- [65] A warrant is presumed to be valid. The party bringing the challenge has the burden of demonstrating its invalidity: Donovan at para. 82.

Discussion

- [66] In applying the relevant principles to the case at bar, I conclude that the defence has not met its burden of establishing the invalidity of the general warrant.
- [67] In my view, there is no basis to excise paragraphs 25(f) and 28 of the ITO. I do not agree that these paragraphs contained conclusory statements or bald assertions with no factual underpinnings.
- [68] As the Crown submitted, the ITO disclosed that the basis for BSO Freeland's belief that the parcel contained firearm suppressors was his personal inspection of the items. In addition, the items were documented in the photographs disclosed to the issuing judge in para. 25(h) of the ITO. In my view, the ITO contained sufficient information to allow the issuing judge to assess the reliability of BSO Freeland's belief.
- [69] With respect to Cst. Millette, the ITO sets out in some detail his experience, training and expertise in firearms including identifying prohibited devices such as firearm suppressors. Further, the ITO disclosed that Cst. Millette's belief was based on a review of the same photographs taken by BSO Freeland. Similarly, in my view, the ITO contained sufficient information to permit the issuing judge to assess the reliability of Cst. Millette's opinion that the items were suppressors "designed to muffle or stop the sound or report of a firearm".
- [70] I do not agree that the non-inclusion of Exhibit B in the ITO constituted a material omission by the affiant. As the Crown submitted, based on the ITO, both BSO Freeland and Cst. Millette had the photographs shown in Exhibit B when they formulated their respective beliefs that the items were firearm suppressors. In the circumstances, I am not persuaded that disclosure of Exhibit B to the issuing judge could have impacted the merits or substance of the application: Nguyen at para. 51; Montgomery at para. 98.
- [71] I also do not agree that the ITO did not disclose a basis to support a belief that Mr. Dill knew that the parcel contained suppressors and not "LED tubes" as declared. Based on the ITO, it was open to the issuing judge to infer the accused's knowledge of the suppressors and their prohibited nature from: (i) the mis-description of the items as "LED tubes" and (ii) the accused's prior involvement with unlawful possession of firearms as described in the ITO including his prior convictions for serious firearm offences. As the reviewing judge, it is not

my role to weigh or resolve competing inferences: Sadikov at para. 88.

- [72] Based on the totality of the record, I conclude that the ITO contained sufficient information to support reasonable grounds to believe that the offence of importing a prohibited device was or will be committed, based upon which the general warrant could have issued.

Best interests of the administration of justice

- [73] As I had mentioned earlier, the accused also alleges that the investigators employed a ruse to orchestrate his attendance at the target residence in order to facilitate the planned controlled delivery of the parcel. It is argued that the alleged ruse ought to have been disclosed to the issuing judge so that the judge could have considered it in determining whether issuing the general warrant was in the best interests of the administration of justice pursuant to section 487.01(1)(b) of the Criminal Code.
- [74] However, it became apparent during the hearing that the evidence did not support the existence of the alleged "ruse" and the defence did not advance further arguments in light of this. In the circumstances including the lack of evidentiary foundation, I make no findings of breach under the Charter and dismiss the application.

"Laurie J."

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