

CANADA / JUDGMENT

R. v. Harmes

2022 BCSC 262

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2022 BCSC 262 R. v. Harmes

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Harmes,

2022 BCSC 262

Date: 20220217

Docket: X083326; X083327

Registry: New Westminster

Regina

v.

Christopher Leigh Harmes, Scott William Cashman

and Margaret Iris Scholar

Before: The Honourable Madam Justice Devlin

Reasons for Judgment re: Voir Dire #1 - Challenge to Validity of Search Warrant

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Place and Dates of Voir Dire:

New Westminster, B.C.

February 7, 8, 2022

Place and Date of Ruling given to Parties with Reasons to Follow:

New Westminster, B.C.

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Introduction

- [1] The accused, Christopher Harmes and Scott Cashman, are charged on Indictment 83326 with several offences under the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA] and Mr. Harmes is also charged with several firearm offences under the Criminal Code, R.S.C., 1985, c. C-46 [Code]. A third accused, Margaret Scholar, is charged with two additional CDSA offences. Mr. Harmes is also charged on Indictment 83327 with several offences related to firearm prohibitions. The charges arise as a result of a search of two residences: 7419 Columbia Street, Mission, BC (the "Columbia Street Residence") and 12021 Garden Street, Maple Ridge, BC (the "Garden Street Residence").
- [2] One information to obtain ("ITO") was filed in support of search warrants for both residences; however, in this application, Mr. Harmes and Mr. Cashman (the "Applicants") only challenge the validity of the ITO as it pertains to the search warrant for the Columbia Street Residence. They challenge both the facial and sub-facial validity of the ITO in this regard. It is acknowledged that Ms. Scholar does not have standing to challenge the search of the Columbia Street Residence. Since the results of the Columbia Street Residence search provided evidence regarding charges against Mr. Harmes on both Indictment 83326 and 83327, I held a joint voir dire pursuant to s. 551.7(3) of the Code.
- [3] The Applicants' challenge to the sub-facial validity of the ITO was focused solely on the affiant's knowledge regarding the configuration of the Columbia Street Residence. I granted leave to cross-examine the affiant on whether he had failed to particularize the specific place to be searched.
- [4] The Applicants also challenge the facial validity of the ITO on the basis that it does not establish reasonable and probable grounds to believe that the Columbia Street Residence is connected to the criminal activity under investigation, nor provide a basis to believe evidence of an offence would be located inside the residence. In addition to the leading authorities from the Supreme Court of Canada, the Applicants rely on a number of decisions to support their position, including *R. v. Liu*, 2014 BCCA 166 [Liu]; *R. v. Sunner*, 2017 BCSC 2445 [Sunner]; and *R. v. Belanic*, 2019 BCSC 1411 [Belanic].
- [5] The Crown's position is that the ITO provides reasonable and probable grounds to support the issuance of the warrant to search the Columbia Street Residence. They argue that the affiant accurately described the place to be searched and that the ITO, viewed in its totality, provides a credibly-based probability that the items named would be located at the Columbia Street Residence.

Evidence on the Voir Dire

Sub-Facial Challenge (Cross Examination of Cst. Doherty)

- [6] As stated earlier, I granted the Applicants leave to cross examine the affiant, RCMP Cst. Doherty, on the narrow issue of what he knew about the configuration of the Columbia Street Residence at the time he swore the ITO. Cst. Doherty testified that he had first submitted the ITO on July 14, 2020 with a plan to execute the warrant the next day. However, on July 15, 2020, the investigators did not observe Mr. Harmes, so they decided to postpone the search. As a result, on July 15, 2020, further surveillance was conducted and it was during this surveillance that Cst. Doherty first heard reference to observations of an elderly male on the property. Cst. Doherty also attended a briefing with other members of his investigative team and members of the Emergency Response Team, during which he again learned of a "possible elder male in basement". Cst. Doherty submitted a revised ITO on July 15, 2020 and the search was executed on July 16, 2020. He did not include reference to the July 15, 2020 observation of an elderly male on the property.
- [7] Cst. Doherty testified that based on multiple days of surveillance on the Columbia Street Residence, he had no reason to believe that there were multiple units inside the house. The observation of an elderly male on the property on July 15, 2020 did not cause him to believe that there may be multiple residential units within the residence. Cst. Doherty also testified that he was aware he had an obligation to disclose with precision the place to be searched.
- [8] I am satisfied that there was nothing arising from the cross-examination of Cst. Doherty to support the Applicants' argument that the warrant did not adequately describe the place to be searched. Indeed, this is reflected in the fact that counsel did not strenuously pursue this issue in their submissions.

Facial Challenge of the ITO

- [9] Following the cross-examination of Cst. Doherty, the facial challenge to the ITO proceeded by way of submissions from counsel. An edited ITO together with a search warrant for the Columbia Street Residence was marked as Exhibit #1 in this application. The contents of the ITO were canvassed by all parties during their submissions. The warrant issued under s. 11 of the CDSA authorized the police to enter the Columbia Street Residence on July 16, 2020 to conduct a search and seizure with respect to CDSA offences.
- [10] The 47-page edited ITO sworn by Cst. Doherty details the investigation, which began after the police received information that Christopher Harmes was engaged in drug trafficking activity associated to the Garden Street Residence. Between April 2020 and July 2020, surveillance was conducted on Mr. Harmes and Mr. Cashman at both the Garden Street Residence and the Columbia Street Residence. The Columbia Street Residence was believed to be their primary residence. Ultimately, search warrants were obtained to search both residences. As stated earlier, on this application I am dealing only with a challenge to the validity of the search warrant for the Columbia Street Residence.

- [11] The contents of the ITO were canvassed by the parties during submissions. The ITO is organized into sections, beginning with background information and a summary of the investigation. The description of the details of the investigation begins with the information obtained from Informant "A" and the background information pertaining to the informant. In this section, information obtained from a Crime Stoppers Tip is also provided; however, it is substantially edited. The affiant also sets out Mr. Harmes' background information, obtained from PRIME and CPIC records that detail his prior convictions for drug and firearm offences.
- [12] The next section of the ITO details information regarding the two residences. With respect to the Garden Street Residence, the affiant sets out that on April 19, 2020, police attended at that residence and located a deceased male, as well as approximately 20 glass pipes with white residue around the house, many inside the deceased's bedroom. Police also observed a container of what appeared to be white rocks of crack cocaine and a small baggy of crystal substance they believed to be methamphetamine. The affiant was advised that Scott Cashman and Al Saulnier were listed as current occupants of the Columbia Street Residence.
- [13] The majority of the ITO contains details of surveillance conducted on the Garden Street Residence, the Columbia Street Residence, and a residence associated to Ian Whillock, who was identified by Informant "A" as someone who deals drugs for Mr. Harmes. This section also contains the results of follow-up investigations into certain vehicles that were observed at the residences. The remaining portion of the ITO sets out the justification for the search warrant.
- [14] I will consider the contents of the ITO in detail during my analysis but will first canvass the legal principles to be applied on a review of the validity of a search warrant.

Legal Framework

Statutory Requirements for CDSA Search Warrants

- [15] The issuance of CDSA search warrants is governed by s. 11 of the CDSA, which provides:

11 (1) A justice who, on ex parte application, is satisfied by information on oath that there are reasonable grounds to believe that

- (a) a controlled substance or precursor in respect of which this Act has been contravened,
- (b) any thing in which a controlled substance or precursor referred to in paragraph (a) is contained or concealed,
- (c) offence-related property, or
- (d) any thing that will afford evidence in respect of an offence under this Act under section 354 or 462.31 of the Criminal Code

is in a place may, at any time, issue a warrant authorizing a peace officer, at any time, to search the place for any such controlled substance, precursor, property or thing and to seize it.

- (2) For the purposes of subsection (1), an information may be submitted by telephone or other means of telecommunication in accordance with section 487.1 of the Criminal Code, with such modifications as the circumstances require.
- [16] In order to issue a search warrant under s. 11(1) of the CDSA, a justice must be satisfied by information on oath that there are reasonable grounds for belief that a drug offence has been committed, that the things to be searched for are either drugs or drug-related items as set out in (a) through (d), and that the things to be searched for are in the place to be searched.

The Governing Legal Principles

- [17] The parties agree as to the legal principles which 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 (SCC) [Garofoli] sets out the test for the reviewing judge in determining whether a search warrant was properly issued. The inquiry is whether, based on a review of the contents of the ITO, as amplified on review, the issuing justice could have granted the warrant (Garofoli at 1452, per Sopinka J.). The reviewing judge must 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 search 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; and *World Bank Group v. Wallace*, 2016 SCC 15. The parties have also referred to several other cases that apply the principles derived from the Supreme Court of Canada cases, with particular reliance on the decisions in *Liu*, *Sunner*, and *Belanic*.
- [18] In *Liu*, after thoroughly canvassing the law applicable to reviewing the issuance of a search warrant, Justice Garson (for the Court) summarized the legal framework to be applied in determining the facial validity of a warrant as follows:
- [39] I would summarize the main points from this jurisprudence in the following way:
- The trial judge's role in reviewing the validity of a search warrant is to consider whether the material filed in support of the warrant, as amplified on review, could support the issuance of the warrant.
 - The trial judge should examine the information in its totality, not on a piece meal basis, in a "practical, non-technical, and common sense basis".
 - The question is not whether the reviewing judge would have granted the order, but whether there was an objective basis on which the issuing justice could have done so.

- The appropriate standard is one of "reasonable probability" rather than "proof beyond a reasonable doubt" or "prima facie case". The phrase "reasonable belief" also approximates the requisite standard.
- Reasonable grounds may be said to exist at "the point at which credibly-based probability replaces suspicion".

[Emphasis in original.]

[19] Further, as set out in *R. v. Vu*, 2013 SCC 60 [Vu] at para. 16, the question for the reviewing judge is to assess whether there is "reliable evidence that might reasonably be believed on the basis of which the authorization could have been issued ", not whether it should have been granted [emphasis added]. Further, the reviewing judge must take into account "that authorizing justices may draw reasonable inferences from the evidence in the ITO; the informant need not underline the obvious": Vu at para. 16; see also *R. v. Sanchez*, [1994] O.J. No. 2260, 1994 CanLII 5271 (ONSC) at para. 20. To determine whether reasonable grounds exist, a trial judge must consider the totality of the circumstances: *R. v. Whitaker*, 2008 BCCA 174 at para. 41 (leave to appeal ref'd: [2008] S.C.C.A. No. 296).

[20] In *R. v. Perkins*, 2018 BCSC 312 [Perkins], at paras. 21 to 23, Justice Ehrcke canvassed several important concepts that are relevant to my analysis:

In assessing the application materials submitted for a warrant, the grounds must be assessed from the standpoint of a reasonable person standing in the shoes of the police officer, and in this respect the experience of the affiant is relevant: *R. v. Tran*, 2007 BCCA 491 at paras. 12-13.

Where the affiant relies on information obtained from a confidential informer, the court must assess the informer's reliability, including motive, and whether the information was compelling, credible, and corroborated, although weakness in one area may be compensated for by the strengths in the others: *R. v. Debot* at p. 215. The court should look at the degree of detail of the information, the informer's source of knowledge, and any indicia of the informer's reliability, such as past performance or confirmation of his or her information from other investigative sources: *R. v. Garofoli* (1990), 60 C.C.C. (3d) 161 at p. 191 (S.C.C.).

Reasonable grounds can be based in part on reputation evidence, including the reputation of the suspect and the reputation of people with whom the suspect associates, although the weight to be given to such evidence will depend in part on its reliability: *R. v. Debot* at pp. 215-216; *R. v. Tran* at paras. 13-15; *R. v. Wan*, 2008 BCSC 268 at para. 3.

[21] In *Belanic*, Justice Riley identifies two important concepts a reviewing judge must consider when assessing the facial sufficiency of the grounds in an ITO. The first concept is referred to as the rule against narrative which refers to the requirements to properly source information set out in the ITO. As Riley J. explained at para. 13 "without knowing the source of the information, the reader cannot make any assessment of the credibility and reliability of the source, making it difficult or sometimes impossible to determine whether the information is capable of supporting a reasonable belief". The second concept is the rule

against conclusory statements, which refers to the need to set out the factual underpinning supporting a statement, so that the issuing justice may evaluate the factual basis for the conclusion (Belanic at para. 14; Sunner at para. 31).

[22] With these legal principles in mind, I will turn to my analysis of the contents of the ITO.

Analysis

[23] In conducting my analysis, I will address the specific issues raised by the Applicants, mindful of the legal principles discussed earlier in these reasons.

Did the ITO contain sufficient information about the affiant's experience?

[24] The Applicants submit that the affiant failed to provide any detail regarding his experience such that the issuing justice could not have determined whether he had the requisite knowledge and experience to support his beliefs. The Crown submits there is sufficient information regarding the affiant's experience, such that the issuing justice could draw certain inferences from the observations.

[25] The affiant's background and experience are set out at paras. 1 and 15 of the ITO. At para. 1, the affiant states that he has been a member of the RCMP since 2012 and has been assigned to the Ridge Meadows RCMP Street Enforcement Unit ("SEU") since September 2017. At paragraph 15, he explained that the SEU is a "plain clothes pro-active unit mandated to target drug and property crime offences in Maple Ridge and Pitt Meadows", which includes "the on-going issues with drug dealing at the street level". In the ITO, after the affiant has detailed the surveillance observations for a particular day, he provides a summary of the preceding paragraphs and then his comment and belief regarding what the surveillance observations establish.

[26] The Applicants submit that there is nothing in either of these two paragraphs that details the affiant's specific experience or training such that an issuing justice could assess his belief from the standpoint of a reasonable person standing in the shoes of the police officer (Perkins at para. 21, R. v. Tran, 2007 BCCA 491 [Tran] at paras. 12-13). Therefore, they submit, when the affiant states that he considers observations of individuals attending the Garden Street Residence as "short duration visits" that are "consistent with drug trafficking from a drug house", there is no basis to evaluate whether those beliefs are objectively reasonable. While I agree with the applicants that the affiant does not provide an extensive account of his specific training, nor roles he has held in other investigations, the lack of detail does not equate with no detail. It was open to the issuing justice to conclude that based on his eight years with the RCMP - including his more recent experience targeting street level drug dealing with the SEU for approximately three years - the affiant had the requisite knowledge and experience to draw inferences and make deductions from what the surveillance had revealed.

[27] Additionally, it is important to consider that the affiant's beliefs were informed by other information in addition to the surveillance observations. In particular, the affiant also relied on a report from Informant "A" that Mr. Harmes was both loading drug dealers and dealing drugs in Maple Ridge. Informant "A" referred specifically to the Garden Street Residence as a location where Mr. Harmes dealt drugs. When I consider all of this information collectively with the affiants' experience, I am satisfied that there is sufficient information to accept the inferences drawn by the affiant regarding drug trafficking activity (see Tran at paras. 13-14; Perkins at paras. 21-22). I am cognizant that some of the affiant's comments are conclusory statements, but I am satisfied that the majority of those statements have foundational support.

Was the information from Informant "A" sufficiently reliable?

[28] Paragraphs 17 and 18 of the ITO set out the information provided by Informant "A" and para. 19 provides the informant's pedigree, which details the informant's motivation, history of providing information, and whether it had been corroborated. Specifically, in March of 2020, Informant "A" advised as follows:

- Chris Harmes deals drugs in Maple Ridge; and
- Chris Harmes is associated to 12021 Garden Street.

[29] Then, in July of 2020, the informant provided the following additional information:

- Chris Harmes deals drugs in Maple Ridge;
- Specifically, he loads drug dealers in Maple Ridge;
- He supplies cocaine, methamphetamine, ketamine, and fentanyl;
- Harmes deals drugs at 12021 Garden Street;
- He keeps some amount of drugs there;
- Harmes has a gun;
- Ian Whillock deals drugs for Harmes; and
- Harmes lives in Mission.

[30] In para. 19, the affiant addresses the reliability of Informant "A". He notes that Informant "A" has provided information to the police on prior occasions with respect to both drug trafficking and firearms, which resulted in seizures and arrests. The informant's information has been found to be reliable on prior occasions. Further, the informant's motivation is monetary compensation.

[31] The Applicants submit that the informant's information fails to address the factors set out in *R. v. Debot*, [1989] 2 S.C.R. 1140, 1989 CanLII 13 (SCC) [Debot]. They submit the information is general in nature, lacking details with respect to recency and origin, and is not

corroborated. I do not agree. As stated earlier, when assessing the reliability and significance of the informer information, the court must be guided by the "totality of the circumstances" approach described in *Debot* (see also *Perkins* at paras. 20-22). As Justice Wilson explained in *Debot* at 1168, although the assessment of reasonable grounds must consider whether the information was compelling, credible, and corroborated, it is the totality of the circumstances that must rise to the level of reasonableness, and weakness in one area may be compensated for by strength in the others:

First, was the information predicting the commission of a criminal offence compelling? Second, where that information was based on a "tip" originating from a source outside the police, was that source credible? Finally, was the information corroborated by police investigation prior to making the decision to conduct the search? I do not suggest that each of these factors forms a separate test. Rather, I concur with Martin J.A.'s view that the "totality of the circumstances" must meet the standard of reasonableness. Weaknesses in one area may, to some extent, be compensated by strengths in the other two.

[Emphasis added.]

[32] As set out in *Garofoli* at 1456-1457, the court should look at the degree of detail of the information, the informer's source of knowledge, and any indicia of the informer's reliability (such as past performance or confirmation from other investigative sources).

[33] I agree with Crown counsel that the surveillance observations serve to corroborate much of the information obtained from Informant "A". As I will set out in more detail later in these reasons, the surveillance establishes that Mr. Harmes resides at the Columbia Street Residence in Mission and frequents the Garden Street Residence, sometimes on his own and other times along with Mr. Cashman. Mr. Harmes is observed attending at the Garden Street Residence on April 28, April 30, June 11, and July 3, 2020. The surveillance also reveals a number of other individuals attending at the Garden Street Residence. Some of these individuals attend at the Garden Street Residence for short periods of time - some, a matter of minutes. These are the attendances the affiant described as "short duration visits", which he considered consistent with drug trafficking activity at a drug house. In addition, Mr. Whillock - who Informant "A" said deals drugs for Mr. Harmes - is observed at the Garden Street Residence on April 30, 2020 while Mr. Harmes is also present. Also, on April 28, 2020, Mr. Harmes is observed at Whillock's residence, and on July 8, 2020, they are seen together at the Art Infinity Hotel in Maple Ridge. Further, on April 19, 2020, when police attended the Garden Street Residence regarding a dead body, they observed suspected drugs and drug paraphernalia in the residence.

[34] I find that the information provided by Informant "A" is both specific and compelling. While I acknowledge it does not state an exact date upon which the informant obtained the information or whether it was received first- or second-hand, it is certainly specific in other aspects. For example, it provides the exact location of the drug dealing site (the Garden Street Residence), the location of Mr. Harmes' residence, and it details Mr. Harmes'

association with Mr. Whillock. All of this information is independently corroborated through surveillance observations. As stated in Debot, weaknesses in one area may be compensated for by strengths in the others (Debot at 1168). When I consider the totality of the circumstances I find the Informant "A" information was compelling, credible and corroborated.

Were there reasonable grounds to believe that a search of the Columbia Street Residence will afford evidence of a named offence?

Review of the ITO

- [35] While the Applicants do not concede that the ITO contains evidence of drug trafficking activity at the Garden Street Residence, they did not focus their submissions on that point. As my review of the surveillance observations will reveal, I find there was ample evidence of such activity at the Garden Street Residence. When considered together with the information from Informant "A", there are reasonable and probable grounds to believe that drug trafficking offences occurred at that location. The thrust of the Applicants' submission is that there is no information in the ITO to establish a discernable pattern connecting Mr. Harmes and Mr. Cashman to the activity at the Garden Street Residence, and therefore, no grounds to believe that evidence of the offences will be located at the Columbia Street Residence. The Applicants rely on Liu and Sunner to support their position.
- [36] On this point, I will begin my analysis with a detailed review of the relevant paragraphs in the ITO and then move on to consider the analysis in Liu and Sunner. As I have previously stated, surveillance was conducted on the Garden Street Residence between April 1, 2020 and July 3, 2020.
- [37] Paragraph 26 details the surveillance conducted on April 1, 2020. At 10:36, a Dodge Ram registered to Scott Cashman was observed parked in front of the Garden Street Residence. An unknown male from the Ram walked to the rear of the residence carrying a duffle bag. At 11:18, the same male left the residence carrying a duffle bag and departed in the Ram. At 12:00, the Ram was observed parked in the driveway of the Columbia Street Residence and the same male was observed carrying a duffle bag into the Columbia Street Residence. This sequence establishes a direct connection between the Garden Street and Columbia Street Residences and the Ram registered to Mr. Cashman. The fact that a duffle bag is observed in this sequence takes on significance when considered together with other similar observations.
- [38] Also on April 1, 2020, surveillance observed three different males attending at the Garden Street residence for short durations. One male is observed arriving at 12:40 and heading towards the back of the residence, before leaving moments later. At 12:45, another male walks around the back of the residence and is seen leaving moments later. At 13:05, that same male returns to the back of the residence and then departs at 13:11 with his left hand in his pocket. At 12:55, another male is seen coming from the back of the residence and

walking away; he returns to the residence at 13:21 and enters with another male. These are the short duration visits the affiant considers consistent with drug trafficking from a drug house.

- [39] Paragraphs 28 and 30 detail the observations from April 2 and 3, 2020. Neither Applicants are observed although there were observations of various other males attending the Garden Street Residence. I agree with the Applicants that the summary at paragraph 29 is not accurate; this is an issue that arises in several of the affiant's summary paragraphs. However, since the specific observations were provided to the issuing justice in the preceding paragraphs, I am satisfied that the inaccuracies or errors in the summary paragraphs do not detract from the strength of the observations themselves.
- [40] Paragraph 32 details the surveillance observations at the Garden Street Residence on April 7, 2020 between 15:52 and 21:17. Neither Mr. Harmes nor Mr. Cashman were observed on this day, but numerous other individuals were seen attending the residence. At 18:42, a male attended the rear of the residence, leaving four minutes later at 18:46. At 20:05, another male entered the residence and departed at 20:14. Another male was recorded as entering the residence at 21:17 and then departing at 21:01, although this is clearly an error. Despite this error, the other observations are further evidence of individuals attending the residence for brief periods of time. These observations support the affiant's belief that this was drug trafficking activity at a drug house.
- [41] Paragraph 36 sets out the April 28, 2020 surveillance, which began at the Whillock residence. At 18:00, a male later confirmed to be Mr. Harmes was observed getting into a taxi at Whillock's residence. The taxi proceeded to a residence in Surrey and at 18:26, Mr. Harmes got out of the taxi. At 19:28, Mr. Harmes was observed entering another taxi. He was dropped off at the Garden Street Residence at 19:53. Between 19:53 and 22:41, Mr. Harmes remained at the Garden Street Residence. While Mr. Harmes was at the Garden Street Residence, he was observed inside the residence, pacing back and forth while on the phone. At 20:56, while Mr. Harmes is at the residence, a male is observed leaving the Garden Street Residence carrying a large bag. At 22:29, a white SUV arrived at the residence and a male got out and went to the rear of the residence for a few minutes, returning at 22:34 and departing in the vehicle. At 22:41, Mr. Harmes departed the Garden Street Residence in a taxi and after picking up a female in Surrey, he returned to the Columbia Street Residence at 12:15. This sequence establishes a link between Mr. Harmes and Mr. Whillock as well as between Mr. Harmes and the Garden Street Residence. Further, it establishes that while Mr. Harmes was present at the Garden Street Residence, one male attended the residence and departed a short time later carrying a large bag. Another male attended the residence for a short period of time, which the affiant believed was consistent with the kind of activity typically seen at a drug house. These observations are further evidence that Mr. Harmes is connected to the activity taking place at the Garden Street Residence.

- [42] Paragraph 38 sets out the April 29, 2020 surveillance conducted at various locations, including the Columbia Street Residence. At 17:45, the Dodge Ram registered to Mr. Cashman is observed parked in the Columbia Street Residence driveway and a male with a dog is observed entering the residence. At 18:55, a male believed to be Mr. Cashman was observed in the yard, and at 20:00, he was seen entering the residence. In addition, various individuals were observed attending at Mr. Whillock's residence. At paragraph 39, the affiant provides a summary of observations that is poorly drafted. He refers to there being observations consistent with drug trafficking from a drug house, but does not state which residence he is referring to. In my view, this is poor drafting; however, as noted earlier in these Reasons, I consider that the issuing justice would have had, and could have relied on, the specific details and observations that underlie the para. 38 summary. Accordingly, I am not persuaded that errors in the summary paragraph detract from the usefulness or force of the underlying observations, which the issuing judge had access to.
- [43] Paragraph 40 sets out the details of the surveillance observations on April 30, 2020. At 14:53, two males later identified as Mr. Harmes and Mr. Cashman are observed leaving the Columbia Street Residence in the Dodge Ram, with Mr. Cashman driving. They are observed attending at a trailer park in Maple Ridge at 15:29. At 16:08, they are observed walking towards the Ram while carrying a bag, which they place in the truck bed under a tonneau cover. At 16:14, the Ram is observed backing into the driveway at the Garden Street Residence. At 16:42, a grey Mazda registered to a Devon Bird arrives at the residence and a male enters the residence. At 17:08, Mr. Harmes is observed inside the residence. At 17:32, another male with a duffle bag is seen in the driveway heading towards the rear of the Garden Street Residence. At 17:46, the male from the Mazda departs, and at 17:56, the same male returns to the residence. At 18:00, another male attends to the rear of the residence. Then at 18:03, Mr. Whillock arrives at the Garden Street Residence and walks towards the back. At 18:10, the male from the Mazda leaves the residence and departs in his vehicle. At 18:13, another male arrives in a truck and is seen heading towards the back of the residence. Between 18:22 and 18:26, Mr. Harmes and Mr. Whillock are observed leaving the Garden Street Residence. At 18:44, Mr. Harmes is observed returning to the Garden Street Residence with a grocery bag. At 18:51, Mr. Harmes and Mr. Cashman are observed leaving the Garden Street Residence in the Ram, with Mr. Cashman driving. At 19:19, both are seen entering the Columbia Street Residence.
- [44] This sequence establishes that Mr. Harmes and Mr. Cashman were together from 14:53 (when they departed the Columbia Street Residence) until 19:19 (when they returned to the Columbia Street Residence). Between 16:14 and 19:19, they were together at the Garden Street Residence, during which time various other persons attended the residence, including Mr. Whillock, who has been identified by Informant "A" as someone who deals drugs for Mr. Harmes. It is also significant that Mr. Harmes and Mr. Cashman were seen carrying a duffle bag from the trailer park, which they placed in the Ram before driving to the Garden Street Residence. While there were no observations of the duffle bag being transported into the Garden Street residence, it was reasonable to infer that they did not

leave the duffle bag in the truck. Regardless, this sequence of events establishes that Mr. Harmes and Mr. Cashman spent a considerable amount of time at the Garden Street Residence, during which Mr. Whillock also attended. There were various indicia of drug trafficking at the Garden Street Residence, such as repeated visits of relatively short duration from various individuals (including Mr. Whillock) and the movement of duffle bags into or around the residence. Mr. Harmes and Mr. Cashman attended the Columbia Street Residence both before and after attending the Garden Street Residence.

- [45] I agree with the Applicants that the summary at paragraph 41 does not align with the observation set out at paragraph 40. Again, however, I find this only indicates poor draftsmanship by the affiant; it does not detract from the significant observations that are detailed at paragraph 40.
- [46] Paragraph 42 explains that Mr. Harmes and Mr. Cashman were observed together on May 6, 2020. Between 13:15 and 13:37, they are observed in the Dodge Ram, travelling from the Columbia Street Residence, to a store, and then back to the residence.
- [47] Paragraph 44 details the observations on May 7, 2020 beginning at 13:28, when Mr. Harmes arrives at the Columbia Street Residence in a taxi. At 13:39, the Ram driven by Mr. Cashman departed the Garden Street Residence. After a few stops, including at Vancity bank, Mr. Cashman returns to the Columbia Street Residence at 14:34. Meanwhile, at 14:02, Mr. Harmes was observed greeting an SUV that was parked in the driveway of the Columbia Street Residence. At 14:08, a male driving a red pickup truck arrived at the Columbia Street Residence then departed at 14:27. This sequence further demonstrates the connection between Mr. Cashman and the Garden Street Residence.
- [48] Paragraph 46 details the observations on June 11, 2020 beginning at 20:50 where Mr. Cashman's Dodge Ram was observed parked at the Garden Street Residence. It was backed into the driveway. At 21:00, two males were observed leaving the Garden Street Residence. At 21:10, a Kia sedan arrived at the Garden Street Residence and an unknown person entered the residence, departing three minutes later at 21:13. The vehicle was observed to travel a short distance and then pull over, at which point the driver appeared to use drugs. While there is no direct evidence that this person obtained drugs from the Garden Street Residence, when these observations are considered together with all of the other circumstances, it is a possible inference for the issuing justice to draw. Between 21:19 and 21:23, a male identified as Devon Bird attended at the Garden Street Residence. As set out at para. 55 of the ITO, Mr. Bird has suspected connections to drug trafficking, including a prior arrest for possession of a controlled substance and the seizure of large amounts of drugs and various phones from a vehicle registered to Mr. Bird in 2019. At 21:35, Mr. Harmes was observed leaving the Garden Street Residence. He was carrying a black "manbag/gymbag", and he departed the area in the Ram. This sequence establishes that Mr. Harmes was again at the Garden Street Residence when there were two short duration visits. One of the men was observed using drugs following one of these visits, and another is suspected to be involved in drug trafficking.

- [49] Paragraph 48 details the observations from June 30, 2020, including an observation at 22:27 of the Dodge Ram arriving at the Columbia Street Residence and Mr. Cashman entering the house. Then at 22:42, Mr. Harmes arrived at the Columbia Street Residence in a taxi and carrying a duffle bag. The fact that Mr. Harmes is observed carrying a duffle bag into the residence is significant when considered together with the other observations of him carrying a duffle bag to the Garden Street Residence.
- [50] Paragraph 50 details the observations that occur on July 3, 2020, which is the last significant day of surveillance before obtaining the warrant. Surveillance was conducted at the Garden Street Residence, the Columbia Street Residence, and the Whillock residence. The observations are set out in chronological order and I will focus on those observations of Mr. Harmes' activity, the Garden Street Residence, and the Columbia Street Residence.
- [51] Between 15:20 and 15:31, a male was observed attending at the Garden Street Residence for a short duration. At 15:51, the same male returned to the Garden Street Residence, although he was wearing a different top. At 17:10, a male arrived at the Garden Street Residence, knocked on the front door and then was observed walking around to the rear of the residence. Between 17:52 and 18:01, another male with a small boy attended the rear of the Garden Street Residence. Between 18:08 and 18:20, another male attended at the Garden Street Residence. These observations are similar to that of other short duration visits to the Garden Street Residence noted earlier. These are the kind of short duration visits that the affiant believes are consistent with drug trafficking activity at the residence.
- [52] Between 17:11 and 21:19, Mr. Harmes was observed. At 17:11, Mr. Harmes was observed departing the Columbia Street Residence carrying a black duffle bag and a heavy black, grey, and white box. He entered a yellow van taxi, which was lost to surveillance for a period of time. At 18:42, Mr. Harmes was observed arriving at the Garden Street Residence in a similar yellow taxi van. Mr. Harmes was observed carrying a black duffle bag up to his chest as if the bag was heavy. He entered the rear of the residence. At 19:42, Mr. Harmes was observed departing the Garden Street Residence in a taxi with another male identified as Gordon St. John. At 19:45, the taxi arrived at the Art Infiniti Hotel in Maple Ridge. At 19:49, Mr. Harmes - carrying a duffle bag - was observed with the other male, returning to the taxi. At 20:13, Mr. Harmes and the male believed to be St. John arrived at the Columbia Street Residence in the taxi. There was no observation of Mr. Harmes taking the duffle bag into the Columbia Street Residence, but I find it was a reasonable inference for the issuing justice to draw. At 20:42, another taxi arrived at the Columbia Street Residence and Mr. Harmes and Mr. St. John got into the taxi and travelled directly to the Garden Street Residence. Mr. St. John was dropped off at the Garden Street Residence and Mr. Harmes continued in the taxi to the Art Infiniti Hotel in Maple Ridge. This was the same hotel he had attended earlier in the day. At 21:19, the taxi departed without Mr. Harmes.
- [53] Mr. Harmes' activity on this day is significant as it provides a compelling sequence of events establishing a direct link between the Columbia Street Residence and the activity at the Garden Street Residence. When considered together with the observations on April 1, 2020

and June 30, 2020, these observations collectively support an inference that there is a connection between the two locations and the offences. Further, given the observations at the Garden Street Residence considered together with the Informant "A" information, it was reasonable for the issuing justice to be satisfied there was a discernible pattern connecting Mr. Harmes and Mr. Cashman to the activity at the Garden Street Residence and to the Columbia Street Residence.

- [54] On July 8, 2020 at 13:41, Mr. Harmes and Mr. Whillock were observed at the Art Infinity Hotel in Maple Ridge. At 14:18, they left the hotel in a taxi and at 14:47, Mr. Harmes was dropped off at the Columbia Street Residence. This sequence establishes a further connection between Mr. Harmes and Mr. Whillock, which further corroborates the Informant "A" information. It also establishes a link to the Art Infinity Hotel, which Mr. Harmes had attended on two occasions on July 3, 2020 discussed above.

Consideration of Liu and Sunner

- [55] As I stated earlier, the Applicants rely on Liu and Sunner to support their position that the ITO does not contain sufficient information to bridge the gap between the commission of offences and grounds to believe that evidence of the offences will be located at the Columbia Street Residence. As set out below, I find the facts in Liu and Sunner are distinguishable from the circumstances in this case.
- [56] In Liu, the appellants were convicted at trial of possessing a controlled substance for the purpose of trafficking. There were strong grounds in the ITO to establish that the appellants were engaged in drug trafficking with Peter Soiles. There were multiple observations, made over a four-week period, of one or both of the appellants entering a secure parkade and entering Soiles' apartment. Each time they only stayed for a short period. The appellants were arrested after leaving Soiles' apartment and found to be in possession of cash but not drugs. The police investigation had determined that they resided on McKay Avenue and a warrant was obtained to search the residence for drugs. In upholding the search warrant for McKay Avenue, the trial judge found the pattern of travel between Regiment Square (Soiles' apartment) and McKay Avenue was sufficient to ground a common sense inference that drugs were stored at McKay Avenue (Liu, para. 29). However, this decision was reversed on appeal. Although there was "overwhelming information that Soiles was trafficking in drugs" and reasonable grounds to believe the appellants were part of the trafficking operation, the ITO did not disclose a reasonable possibility that drugs were being stored at McKay avenue (Liu at para. 41). The court of appeal considered that the police did not observe the appellants departing from McKay Avenue before attending Soiles' residence. There was, therefore, a "gap in the information as to the appellants' point of origin prior to their alleged delivery of drugs to Regiment Square" (Liu at para. 45). The theory was the drugs were stored at McKay Avenue and the appellants returned to McKay Avenue with the money from the previous delivery after delivering the drugs to Regiment Square. However, the warrant did not include currency as an item that was to be searched for.

- [57] In Sunner, there were a number of undercover drug purchases as well as informant information establishing there was an ongoing dial-a-dope business. The central issue was whether there were sufficient grounds to establish that evidence of the drug offences would be found at the residence in question. There was evidence to establish Mr. Sunner had a significant connection to the residence, although it might not have been his sole residence. Justice Riley concluded that involvement in the drug offences and some connection to the residence were not enough to support the warrant. He went on to consider the evidence relating to the residence. He noted that it was not open to the issuing justice to find "any pattern of behaviour or movement of the suspects or vehicles to support a credibly-based probability" that the residence in question was used as a stash site (Sunner at para. 41). Justice Riley concluded that there was "no discernible pattern that could have been identified by the issuing justice as a basis for concluding that [the residence] was a place where drugs or evidence of drug trafficking offences would be found" (Sunner at para. 41).
- [58] Based on my review of the contents of the ITO, I am satisfied that the circumstances presented rise above mere speculation or assumptions, which were the fatal flaws in the ITOs at issue in both Sunner and Liu. While I agree with the Applicants that the drafting of the summary paragraphs in the ITO left much to be desired, those errors did not detract from the sufficiency of the record. As I explained, the information underlying the summaries was available to the issuing judge in each case. The surveillance evidence together with the affiant's experience and the information from Informant "A", considered in totality, formed a compelling basis upon which the warrant could have been properly issued. I am persuaded, in particular, by the following facts:
- Informant "A" indicated that Mr. Harmes "loads dealers in Maple Ridge".
 - The surveillance evidence reveals a connection between the Garden Street Residence (in Maple Ridge) and the Columbia Street Residence, including duffle bags coming and going at both residences.
 - There was a clear pattern of transient, short-duration visits by various individuals, one of whom was observed using drugs shortly after leaving the Garden Street Residence on June 11, 2020. Two others (Mr. Whillock and Mr. Bird) have suspected associations with drug trafficking.
 - Observations, including those made on July 3, 2020, establish a pattern of behaviour or movement to support the probability that both Mr. Harmes and Mr. Cashman were engaged in trafficking activity at the Garden Street Residence.
 - Drugs and drug paraphernalia were found at the Garden Street Residence on April 19, 2020, when police were called to respond to a dead body.
 - Mr. Harmes and/or Mr. Cashman are seen with Mr. Whillock on various occasions, including at the Garden Street Residence.

· There is a clear link between the Garden Street Residence and the Columbia Street Residence - there is no "gap in information" as was identified in Liu (at para. 56). Rather, Mr. Harmes and Mr. Cashman are observed travelling directly between the Garden Street Residence and the Columbia Street Residence on multiple occasions. On July 3, 2020, for example, Mr. Harmes appears to carry a duffle bag out of the Columbia Street Residence, into a taxi, and then into the Garden Street Residence.

[59] Based on my consideration of the totality of the circumstances, I am satisfied that there was a body of information that was capable of supporting an inference that the Columbia Street Residence was connected to and associated with the drug trafficking operations occurring at the Garden Street Residence. I am satisfied that this information could support a credibly-based probability that evidence of that drug trafficking activity would be located at the Columbia Street Residence. On an objective assessment of the circumstances, I am satisfied they provide a sufficiently reliable basis upon which the issuing justice could have issued the warrant for the Columbia Street Residence.

Conclusion

[60] I am satisfied that the issuing justice could have found that there were reasonable and probable grounds to believe that evidence of the offences would be found at the Columbia Street Residence.

[61] Accordingly, the application is dismissed.

"Devlin J."

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