CANADA / JUDGMENT

R. v. Kim

2020 BCSC 1115

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2020 BCSC 1115 R. v. Kim

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Kim,

2020 BCSC 1115

Date: 20200722

Docket: 27841

Registry: Vancouver

Regina

v.

Billie Onare Kim,

Kyle Stephen Latimer

and Jacob Angelo Pereira

Corrected Judgment: The text of the judgment was corrected at paragraph 64 where changes were made on August 6, 2020.

Before: The Honourable Madam Justice Devlin

Oral Reasons for Judgment - Facial Validity of Information to Obtain

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Place and Dates of Hearing:

Vancouver, B.C.

July 17, 20, 2020

Place and Date of Judgment:

Vancouver, B.C.

July 22, 2020

[1] THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.

Introduction

[2] The accused, Billie Onare Kim, Kyle Stephen Latimer and Jacob Angelo Pereira, are charged with several offences under the Controlled Drugs and Substances Act, S.C. 1996 c. 19 [CDSA], as well as several weapons offences under the Criminal Code, R.S.C. 1985, c. C-46 [Code]. The charges arise as a result of a search of unit 1204, 5177 Brighouse Way, Richmond, BC on September 14, 2017 ("Brighouse Way").

[3] In this application Mr. Kim and Mr. Pereira challenge the facial validity of the Information to Obtain ("ITO") filed in support of the search warrant for Brighouse Way on the basis that it does not establish reasonable and probable grounds that unit 1204 is connected to the criminal activity under investigation nor does it provide a basis to believe evidence of an offence would be located inside Unit 1204. Accordingly, the resulting search and seizure of Unit 1204 constituted a breach of their s. 8 Charter rights. In addition to the leading authorities from the Supreme Court of Canada the applicants rely on R. v. Liu, 2014 BCCA 166 [Liu]; R. v. Sunner, 2017 BCSC 2445 [Sunner] and R. v. Belanic, 2019 BCSC 1411 [Belanic] to support their position.

[4] The Crown's position is that the ITO provides reasonable and probable grounds to support the issuance of the warrant to search Unit 1204. They argue that the ITO, viewed in its totality, provides ample grounds to conclude numerous individuals, including the applicants, were engaged in an active dial-a-dope drug trafficking operation called Green Planet, and that they utilized Unit 1204 as a stash site.

[5] In a ruling indexed as R. v. Kim, 2019 BCSC 2150, [Kim #1], I determined that the applicants had an expectation of privacy in the 12th floor hallway and as such their images captured on the covert camera installed by the police breached their s. 8 Charter rights. In a ruling indexed as R. v. Kim, 2020 BCSC 1054 [Kim #2], I determined that Mr. Kim and Mr. Pereira had standing to challenge the validity of the search executed on unit 1204, but Mr. Latimer did not. In a ruling indexed as R. v. Kim, 2020 BCSC 1064 [Kim #3], I determined that Mr. Kim, Mr. Pereira as well as Mr. Latimer had standing to challenge the admissibility of material that was obtained from Brighouse Way consisting of still images obtained from the CCTV footage of the parking garage area and the key fob access records for Unit 1204. In a ruling indexed as R. v. Kim, 2020 BCSC 1075 [Kim #4], I determined that Mr. Kim and Mr. Pereira had standing to challenge the admissibility of the covert physical surveillance conducted in the 12th floor hallway of Brighouse Way. I denied standing to challenge the admissibility of the physical surveillance conducted in the parking garage. As a result of these rulings, counsel agree that the paragraphs containing information obtained from the covert hallway camera, the CCTV footage photographs, fob access records and 12th floor hallway surveillance should be excised from the ITO.

Evidence on the Voir Dire

[6] This application proceeded by way of submissions from counsel. As a result of my earlier rulings, an edited ITO was filed as Exhibit #5 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 residence at Brighouse Way on September 14, 2017 to conduct a search and seizure with respect to CDSA offences.

[7] The ITO details the investigation which began as an undercover operation targeting the Green Planet dial-a-dope operation. A series of eight drug purchases were made by an undercover police officer from various individuals associated to Green Planet. During this phase of the investigation, in addition to the undercover operations, the police engaged a number of investigative techniques including surveillance and installation of tracking devices on both cell phones and vehicles associated to the Green Planet operation. Collectively, these techniques provided the police with information about the activities of the Green Planet workers, their vehicles, their residences and other locations that they frequented. The second phase of the investigation focused on the people and places associated to the location of the master phone and provided information regarding Mr. Kim and others and their association to what are believed to be stash sites for the Green Planet drug trafficking operation.

[8] The applicants concede the ITO contains sufficient information to establish there is a group of individuals engaged in drug trafficking offences. However, they maintain there is nothing in the ITO which would support an inference that Unit 1204 is associated to this activity or that a search of Unit 1204 would afford evidence of the offences.

[9] 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.

The Governing Legal Principles

[10] The parties agree as to the legal principles which govern a review of the validity of a search warrant. R. v. Garofoli, [1990] 2 S.C.R. 1421 at 1452 [Garofoli] sets out the test to determine 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. (See also: R. v. Araujo, 2000 SCC 65; R. v. Morelli, 2010 SCC 8 at para. 40; R. v. Slemko, 2020 BCCA 207 at para. 53; R. v. Wilson, 2011 BCCA 252 at para. 37; Sunner; and Belanic.

[11] In Liu, after thoroughly canvassing the law applicable to reviewing the issuance of a search warrant Madam 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".

[12] 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". (See also: R. v. Sanchez, [1994] O.J. No. 2260 at

para. 20). A determination with respect to whether reasonable grounds exist requires a consideration of the totality of circumstances: R. v. Whitaker, 2008 BCCA 174 at para. 41, leave to appeal ref'd [2008] SCCA No. 296.

[13] In Belanic, Mr. 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 the statement to permit the issuing justice to evaluate the factual basis for the conclusion (see Sunner, para. 31).

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

Analysis

[15] I conduct my analysis by first reviewing the contents of the ITO. As I do, I will comment on those sections which I view as significant to the issues raised on this application. After reviewing the contents, I will turn to a consideration of specific issues raised by the applicants in their submissions.

[16] The first section of the ITO is the introductory section where the affiant sets out his experience including his three-and-a-half years working on drug investigations, definition of terms used in the ITO and offences under investigation. At paragraph 13, the affiant sets out a description of those targets believed to be the managers of the Green Planet operation. Included in this section are the following:

a) Billie Kim who I believe is the primary manager for the Delta and Richmond Green Planet dial-a-dope operations. B. Kim has been both hands-on with the dial-a-dope runners and has appeared to organize the line from a distance using Pikientio, the unknown black male (T11), Haevischer and J. Grieve;

e) The unknown Caucasian male who is of a thicker build and suspected to be Csongor Szucs. The male has not been formally identified but is referred to as Szucs throughout this information as a means of labelling as individual using a likely identity;

f) K. Latimer who I do not believe has any hands-on contact with the day to day drug runners but has an obvious role regarding the direction and logistical organization of the Green Planet operation;

h) An unknown light skinned, possibly Hispanic, male who is suspected to be Jacob Pereira. His identity has not been confirmed but he is referred to as Pereira in this information as a means of labelling an individual using a likely identity.

[17] Also included as persons involved in the management are Anduele Pikientio an unknown black man (T11), Khadim Coddett, Justin Haevischer, an unknown man with high and tight hair and Jesse Grieve, who is deceased.

[18] The next section entitled "Investigation" sets out the details of the arrest of Wayne Brown on December 15, 2016 for dial-a-dope drug trafficking. Seized from Mr. Brown at the time of his arrest were business cards labelled "GPD 604-363-6994, "Z", "ask about our deals". The police believe GPD likely referred to Green Planet Delta which was subsequently confirmed in the investigation.

[19] In April 2017 Informant "A" provided information that Green Planet is a dial-a-dope operation that runs drugs in South Delta and 604-805-4542 is the phone number used by Green Planet to sell drugs in South Delta. Later on in the ITO information obtained from Informant "B" is described, including that the 604-805-4542 is a Richmond dial-a-dope operation that sells drugs in South Delta and that the line is run by "RS". It is believed by the informant handler that "RS" is a reference to the Red Scorpions.

[20] The next section of the ITO details the first phase of the investigation which focused on the undercover police officer purchases of drugs from individuals answering the various phone numbers related to Green Planet. Between April 20, 2017 and July 13, 2017 a total of eight undercover purchases were made (April 20, May 10, May 18, June 1, June 2, June 14, June 29 and July 13). On July 28, 2017 the undercover officer attempted to buy a larger amount of drugs but the deal was not completed. As will be discussed in these reasons, an inference to be drawn from this sequence is that the "boss" did not provide permission for the runners to do a bulk sale. All purchases were arranged by calling a phone number associated to Green Planet. These undercover purchases occurred in various pre-arranged locations and usually involved the undercover police officer entering into the seller's car for a short period of time to exchange money for drugs. The ITO describes the people the undercover operator dealt with to purchase drugs as "runners" for the Green Planet dial-a-dope operation. The list of runners included James Souliere or "Gilly", Mr. Pikientio or "Jax", Joseph De Carvalho, Taylor Poitras, Darryl Whitson, a man identified only as "TJ", Patrick Doyle or "Roy" and Tyler Wideski or "Vince". Mr. Kim is listed both as a runner and as a manager of the Green Planet operation although the undercover operator did not deal with him.

[21] The police also installed tracking devices on the various vehicles used by the runners and managers as well as on the phones, including the phone attached to phone number 604-805-4542 which is believed to be the master phone for the operation (the "Master Phone"). The investigation revealed that phones would be re-directed from one number to another corresponding with the runner working the drug line. Surveillance conducted on the various target vehicles also revealed they were engaged in a number of dial-a-dope sales

consisting of short meetings in various locations throughout the investigation. For example, Mr. Pikientio and Mr. Whitson were observed in brief, seemingly pre-arranged meetings driving either a grey Nissan or a black Dodge Caliber.

[22] The surveillance of certain meetings between various men produced a basis to believe that these men were working with Green Planet. The affiant described these meetings as occasions where the runners were loaded-up by a manager or where a shift change took place amongst the runners requiring an exchange of vehicles. As stated earlier, the applicants do not dispute that there was ample evidence of drug trafficking activity in the ITO. Therefore, I will only refer to a few instances as examples of the observations of the sequence of events which were consistent with the operation of a busy dial-a-dope operation when drivers were periodically re-loaded during brief meetings with a manager of the line and then continued to engage in activities consistent with trafficking.

[23] On June 14, 2017 surveillance was conducted with the assistance of the tracker on the cell phone associated to 604-652-4069. At 15:39 a silver Honda Civic, registered to Pikientio was parked on the east side of No. 4 Road just south of River Drive. A man, who the affiant identifies as Justin Haevischer walked away from the underground garage at 10011/10033 River Drive and got into the passenger seat of the waiting silver Honda Civic driven by Mr. Doyle. The silver Honda Civic drove around the corner where Mr. Haevischer got out and walked towards the underground parking lot. The silver Honda Civic left the area with Doyle driving. The direction of the silver Honda Civic corresponded to the data from the tracker for the location of cell phone 604-652-4068. At 16:51 an undercover purchase arranged by a call to 604-805-4542 occurred with Mr. Doyle who arrived at the location driving a silver Honda Civic.

[24] On June 23, 2017 at 11:41 a Dodge Caliber was observed in the parking lot of the Exit Room at 8960 River Drive, Richmond BC. At 14:36 Tyler Wideski walked into the Exit Room parking lot and at 14:44 Mr. Kim, driving a white BMW registered to him, entered the parking lot. At 14:46 Mr. Wideski was observed walking back to the Dodge Caliber. Mr. Kim's BMW pulled out beside him and the occupants appeared to be speaking to each other. Similarly, on June 29, 2017 a vehicle driven by Tyler Wideski was located in the Exit Room parking lot at 13:21. As Mr. Kim's BMW entered the parking lot, Mr. Wideski walked towards it and was then seen getting out of Mr. Kim's BMW and back into his own vehicle. Mr. Kim's BMW remained in the parking lot unit 13:30 when a sliver Honda Civic arrived and parked in the stall behind Mr. Kim's BMW. Mr. Kim got out of his car and entered the front passenger seat of the silver Honda Civic driven by Mr. Doyle. Two minutes later, Mr. Kim got out of the silver Honda Civic, returned to his BMW and left the area. Mr. Kim was followed to Richmond and then surveillance was terminated. Several hours later at 17:04 a pre-arranged drug purchase was made between the undercover operator and Mr. Wideski who was driving the silver Honda Civic driven earlier by Mr. Doyle when he met with Mr. Kim in the Exit Room parking lot. This sequence illustrates the manner of operation of the Green Planet group. Managers, such as Mr. Kim, met with runners (Doyle, Wideski) in pre-arranged locations for short

meetings where the runners were presumably re-loaded and proceeds of prior sales were collected.

[25] Through surveillance, the investigators were also able to identify a sequence of attendances at specific residential addresses. For example, on July 7, 2017 surveillance observed Doyle driving the silver Honda Civic into a Burger King parking lot in Richmond. At 14:37 Mr. Pikientio was observed walking towards the Burger King and at 14:42 he was observed getting into the silver Honda Civic driven by Doyle. At 14:49 both Doyle and Pikientio got out of the car, shook hands and Doyle walked away while Pikientio got into the silver Honda Civic and drove away. Surveillance then observed Pikientio and Wideski meeting up and then driving together in a grey Honda Civic towards a strip mall in Richmond, where Pikientio got out of the vehicle. At 15:36 Pikientio got into a taxi and travelled to a Canadian Tire parking lot in Richmond. He then walked until he entered the front doors of 8633 Capstan Way, Richmond at 15:56. This sequence is an example of the elaborate routes taken by the group to avoid detection.

[26] On July 11, 2017 the police investigators obtained an all-access fob for 8633 Capstan Way for purposes of their investigation. On July 12, 2017 at 9:00 the black Dodge Caliber was located at Capstan Way and then travelled to the area of Whitson's residence where at 9:33 Whitson was observed as the driver and Pikientio as the passenger. Surveillance then observed the black Dodge Caliber make short stops consistent with dial-a-dope trafficking. Later that day, at 14:40 the black Dodge Caliber was observed entering the underground parkade at Capstan Way. At 15:12 a black Lexus left the underground parkade at Capstan Way with three unknown occupants. The frequency of attendance at Capstan Way along with other observations supports the inference that it was also used as a stash site for Green Planet.

[27] On July 28, 2017 the undercover operator arranged to meet with Souliere, Whitson and another man identified as "Brad" to discuss a purchase of $2,500 worth of drugs. While in the presence of the undercover operator, Souliere placed a phone call and was heard to ask if "any of the boys around?" and explained he needed a "load up" for a customer. Souliere told the undercover operator to call back in thirty minutes. When the undercover office called back the man he believed to be Brad asked how he got the number and then told the undercover operator that he was talking to the boss and it was all good. Although an arrangement was made to meet to do the exchange, no one arrived and the undercover operation was terminated. As stated earlier, this encounter provides further evidence of the structure of the Green Planet operation whereby the "runners" need to consult with others who are the "boss" before engaging in a bulk sale of drugs.

[28] On July 28, 2017 Doyle was arrested in the black Dodge Caliber and various phones and pre-packaged drugs were seized. Doyle was subsequently released from custody. The tracker information indicated that the cell phone associated to 604-652-4068 was located at the Delta Police Department where Doyle had been processed following his arrest. The tracker information also confirmed that the master number 604-805-4542 was no longer forwarded to that number which reveals the immediate action taken by the Green Planet operation to

adapt to the police enforcement action.

[29] After the failure of the attempt to buy larger quantities of drugs on July 28, 2017 and the arrest of Doyle there were no further undercover purchases. Commencing at page 47 of the ITO, the second phase of the investigation is described. This phase focused on the activities of those associated with the Master Phone and the locations associated with the drug trafficking business, as determined through a tracking device attached to the Master Phone. The Master Phone was believed to be used by the Green Planet managers to control the flow of business. This section of the ITO details the observations of Mr. Kim and various others associated with Green Planet and their activities throughout August and early September 2017. Instances of when Mr. Kim and others attended at 5177 Brighouse Way, Richmond BC and the information connecting the drug trafficking activities of Green Plant to Unit 1204 at Brighouse Way are the key issues on this application. I will consider this section in more detail.

[30] On August 1, 2017 the Master Phone was located in the vicinity of Mr. Kim's residence at 9283 Government Street in Burnaby. The phone location was tracked moving from the area of Mr. Kim's residence, to downtown Vancouver and eventually to the area of 5199 Brighouse Way, Richmond where three residential buildings are located. On August 2, 2017 Whitson and Souliere were observed in the black Dodge Caliber in the area of Capstan Way and after further movement it was located at 11:32 at Whitson's residence. At 11:34 Mr. Kim drove his BMW into the parkade of 5177 Brighouse Way and drove out at 11:56. At the same time, the black Dodge Caliber entered a parking lot to the south of Brighouse Way. At 12:00 Mr. Kim's BMW parked window to window with the black Dodge Caliber. Mr. Kim and the occupants of the other car got out, then they all got into Mr. Kim's BMW. Then, Whitson and Pikientio got back into their vehicle and left as did Mr. Kim, likely with the other man. The black Dodge Caliber was then followed to a residence on Blundell Road, where Mr. Souliere got out and went to the residence. I note that the affiant suggests this was a location known to be frequented for the purchase of drugs but the basis for that statement was not properly sourced in the ITO therefore it does not factor into my assessment. However, both Mr. Pikientio and Mr. Whitson had participated in undercover purchases previously so it was open for the issuing justice to infer they would continue to do the same.

[31] On August 8, 2017 at 10:00 Mr. Haevischer was observed driving into the secure parkade at Capstan Way. At 11:44 Mr. Kim drove his BMW into the secure parkade at Capstan Way after waiting about ten minutes in the public parking area. At 11:47 Mr. Kim and another man entered the elevator doors and went out of view. Investigators followed after them and noted that the elevator had a distinct odour of cocaine although the affiant clarifies that he did not see if Mr. Kim actually entered the same elevator he had. The investigators went to the 8th floor where they heard loud male voices from unit 810. There was no cocaine odour in the hallway or in the elevator as they left the 8th floor. At 12:01 Mr. Kim and an unknown man returned to Mr. Kim's BMW and departed the parkade. This sequence provides a basis to infer that Unit 810 at Capstan Way was utilized by Mr. Kim and his associates in relation to

their drug trafficking operation and was linked to their activity at Brighouse Way. At 12:15 Mr. Kim entered the secure parkade at Brighouse Way. The gate at Brighouse Way can only be opened by a fob. At 13:54 Mr. Kim's BMW was parked in stall 353 along with a black Dodge Challenger registered to Craig Latimer. As will be discussed, the relevance of stall 353 and its connection to Mr. Szucs and Unit 1204 is further revealed as the investigation proceeds.

[32] On August 8 and 9, 2017 investigators attended at Brighouse Way and spoke to the concierge Mr. Villeneuve. As a result, investigators were provided with a fob and key to access all the secure areas of Brighouse Way including the parkade. They were also provided a Form K rental document which provided information regarding the rental of Unit 1204. The primary tenant was listed as Csongor Szucs whom Mr. Villeneuve said identified himself as Johnny. Mr. Szucs provided his email contact as "greenplan3t@gmail.com". The unit has been rented since November 1, 2016 by Mr. Szucs. As will be discussed in more detail in my analysis, the information contained in the Form K is a significant link between the Green Plant drug trafficking group, Mr. Szucs and Unit 1204 at Brighouse Way.

[33] On August 9, 2017 at 14:11 Mr. Kim drove his BMW into the secure parkade at Capstan Way. At 14:21 Mr. Kim left the Capstan Way parkade along with a passenger. A few blocks from Brighouse Way, Mr. Kim pulled over next to another vehicle for a short period. About fifteen minutes later, Mr. Kim and Mr. Pikientio were observed walking towards the underground parkade entrance at Brighouse Way. As they entered the parkade they were observed to be looking over their shoulders. Both were observed to be carrying backpacks. At 14:57 Mr. Kim's BMW was located in the Richmond Olympic oval parking lot. The affiant noted that he considered this unusual behaviour and consistent with someone attempting to avoid police detection by distancing themselves from the Brighouse building. It is also important to note that Mr. Kim first attended Capstan Way and then proceeded to Brighouse Way but parked a short distance away from Brighouse Way even though Mr. Kim had access to the parkade as he is seen entering the parkade on foot. As well, this was the day after the incident at Capstan Way where the investigators noted a strong odour of cocaine in the elevator at the time Mr. Kim was present.

[34] On August 10, 2017 at 12:18 Mr. Kim and his girlfriend were pulled over in a traffic stop and his identification was confirmed. Mr. Kim had a scorpion tattoo on his wrist but claimed he was no longer part of the Red Scorpions group. Later that day at 15:59 Mr. Kim left his residence and drove to Vancouver and then eventually back to Brighouse Way, entering the underground parkade at 17:27. The affiant noted that Mr. Kim did not take the direct route from his residence in Burnaby to Richmond in an effort to evade surveillance. Given that Mr. Kim was pulled over earlier in the day, a reasonable inference for the issuing justice to draw is that he was concerned about police surveillance on him.

[35] On August 11, 2017 Mr. Kim drove his BMW into the Brighouse Way parkade. At 15:06 Mr. Kim's BMW was parked in the same tandem stall with a grey Hyundai Santa Fe registered to Craig Latimer parked in front. At 15:41 the grey Santa Fe left the underground. Given the other observations of attendance in the parkade a reasonable inference was that this was the same tandem stall identified as stall 353.

[36] On August 15, 2017 Mr. Kim's BMW was located in the underground parkade at Brighouse Way in the front portion of stall 353. Behind it was parked a black Dodge Durango registered to Csongor Szucs. I pause to note that this was the first time a vehicle associated to Mr. Szucs, the listed tenant of Unit 1204, was observed parked inside the Brighouse parkade and also the first indication that tandem stall 353 is associated to Mr. Szucs or Unit 1204. Given that Mr. Szucs was listed as the tenant for 1204 it was reasonable to infer that he or someone using his vehicle parked in the parking stall associated to his unit. When considered together with the other observations inside the parkade, there was a sufficient basis for the issuing justice to infer that stall 353 is associated to Unit 1204. In particular, there is no evidence that any of the vehicles seen entering the Brighouse Way parkade parked anywhere else other than in stall 353. This is simply not a coincidence.

[37] Also on August 15, 2017, surveillance was set up at the Capstan Way address and observed a black Lexus driven by Haevischer leave the secure parking area at 15:28. At 17:35 the black Lexus returned to Capstan Way with Haevischer driving and Coddett and an unknown black man as passengers. At 17:37 Mr. Coddett was observed to open the door to unit 810 and go inside along with the unknown black man. At 18:02 Coddett, the unknown black man and Haevischer walked from the elevator in Capstan Way to the black Lexus and departed. At 18:17 the black Lexus parked on Brighouse Way in front of the underground parking entrance. Cst. Cessford observed the man driving the black Lexus and confirmed that it was Haevischer. At 18:19 Mr. Kim walked up the underground parking ramp at Brighouse Way to the waiting black Lexus and spoke to the man in the back seat. Then, the black Lexus left the area and Mr. Kim returned to the underground parkade. Again, it is reasonable to infer that Mr. Kim did not simply linger in the parkade.

[38] The sequence of events on August 15, 2017 is significant as it provides a link between activities at Capstan Way with those at Brighouse Way and the various members of Green Planet. While I agree with the applicants that there are some weaknesses in the manner by which the affiant concludes the man was Haevischer, that does not detract from the strength of the information and the non-coincidental encounters noted. Essentially, the man identified as Haevischer was observed at unit 810 Capstan Way which is a location frequented by Green Planet associates. He was then observed meeting Mr. Kim outside Brighouse Way, a location also attended by various Green Planet associates. This is another basis to find that both Capstan Way and Brighouse Way served as stash houses for the Green Planet drug operation.

[39] On August 17, 2017 Mr. Kim's BMW was located at the parking lot of the Boathouse Restaurant in Richmond. Mr. Kim's vehicle was parked beside the grey Hyundai Santa Fe. At 16:14 Mr. Kim returned to his BMW and a heavy set man got into the passenger side of the Santa Fe. Mr. Kim travelled to Brighouse Way and at 16:29 his BMW was observed parked in the underground tandem stall 353 in front of a grey VW Touareg registered to a Ms. Tso - the same vehicle Mr. Szucs is observed driving from Brighouse Way on August 30, 2017. At 17:45 the BMW left Brighouse and the car was tracked to a residential area in Richmond but lost to surveillance. At 18:06 the BMW was seen leaving the residential area with Mr. Kim driving. A few minutes later another vehicle was observed leaving the area and driven by Whitson, one of the Green Plant dial-a-dope runners. I note that there is no indication that Mr. Kim actually met with Whitson at this time.

[40] On August 22, 2017 Kyle Latimer's black Dodge Challenger was observed parked in the Brighouse Way parkade. The affiant conducted some police database searches and learned that Mr. Villeneuve's description of the person he knew as Csongor Szucs or Johnny matched a PRIME photograph and description of Kyle Latimer. However, I note that there is no information explaining how he knows the PRIME photograph matched the description of the person Mr. Villeneuve identified as Johnny or Csongor Szucs. This information is not properly sourced and does not factor into my assessment.

[41] With respect to Capstan Way, the affiant also learned that on June 27, 2017 Mr. Haevischer found Mr. Grieve deceased at 810-8633 Capstan Way. The cause of death was a drug overdose. The affiant also conducted some investigation into Mr. Haevischer and learned from police database files that Mr. Haevischer has a RS tattoo on his shoulders and a scorpion tattoo on his chest. He also had provided his address to police at 810-8633 Capstan Way and has a criminal record. This information serves to connect Mr. Haevischer to the Capstan Way address which he and other Green Planet workers frequently attended.

[42] On August 25, 2017 the tracker on Mr. Kim's BMW indicated that the vehicle left the area of his residence at 13:38 and, after travelling to Port Moody, travelled to Brighouse Way arriving at 15:35.

[43] On August 29, 2017 the tracker on Mr. Kim's BMW indicated that the vehicle arrived at Brighouse Way. Later that day the tracker data indicated the vehicle travelled to Surrey but there was no indication that Mr. Kim was driving the vehicle at that time. At 15:36 the grey Lexus registered to Pikientio was parked in the Brighouse Way parkade as well as the black Dodge Durango registered to Szucs. At 15:39 the black Dodge Durango left the underground parkade with Szucs driving and Kyle Latimer in the passenger seat. At 17:48 the tracker on Mr. Kim's BMW indicated it was at Brighouse Way. These observations indicate that various individuals or cars associated to them attended the secure parking garage at Brighouse Way on the same day as Szucs, the registered tenant of Unit 1204. This sequence of events provides further information linking members of Green Planet, Mr. Szucs and Unit 1204. Mr. Kim does not reside at Brighouse Way so it was reasonable to infer that his frequent attendance at Brighouse Way, his fob access, his parking in stall 353 and his meeting with

associates of Green Planet are all consistent with an association to the activity in Unit 1204 and the managing of the Green Planet drug operation.

[44] On August 30, 2017 at 07:30, the tracker on Mr. Kim's BMW indicated he left the area of his residence and travelled directly to Brighouse Way arriving at 08:11. The next observation was of Mr. Kim's BMW parked in the underground parkade in a parking spot to the south of the designated spot for suite 1204 and in the 1204 parking spots were parked the grey Lexus and the grey VW Touareg. At 9:26 Mr. Kim was observed departing the parkade driving the grey Lexus and then travelling directly to the underground parkade at Capstan Way. Upon arriving at Capstan Way Mr. Kim stopped the vehicle in what is described as an "unusual spot" and at 9:41 he moved the vehicle inside the unsecure area of the parkade. At 9:50 Mr. Kim left in the grey Lexus and returned to Brighouse Way at 10:05. At 13:38 Mr. Kim left the Brighouse Way parkade in another white BMW driven by Coddett. At 14:18 K. Latimer and Szucs were observed leaving Brighouse Way in the black Dodge Durango. They travelled a short distance and then returned to Brighouse Way and entered the underground parkade. At 14:33 the black Dodge Durango was located in the stall associated to unit 1204. At the same time the grey Lexus was backed into the stall running and a group of men were standing behind the grey Lexus looking underneath. The grey VW Touareg was also parked, running near the other vehicles.

[45] At 14:58 Szucs left the underground parkade in the VW Touareg and Mr. Kim left immediately after him driving his BMW. Mr. Kim and Mr. Szucs were observed to drive in tandem through Richmond in what was considered a manner consistent with someone who was trying to expose surveillance or other persons who might be following them. At 15:18 the VW Touareg that had been driven by Szucs was located in an industrial area and Mr. Szucs was observed walking away from the area. Mr. Kim's BMW returned to Brighouse Way at 15:35.

[46] The activity observed on this day is significant as it provides a compelling sequence of events from which one could reasonably infer that Mr. Kim, Mr. Szucs and Mr. Latimer were all together at Brighouse Way. It is also reasonable to infer that they did not simply congregate inside the parkade for no reason, nor was it a coincidence that they all happened to be inside the same secure location. When viewed as part of the totality of circumstances, these observations support an inference that these individuals were gathering in Unit 1204 in connection with conducting their Green Planet drug trafficking operation. I note in this section the parking stall is described as "associated to 1204" which is clearly due to the fact that Mr. Szucs, the tenant of 1204, has his black Dodge Durango and the VW Touareg, which he is observed driving, parked in stall 353. While not explicitly stated it was open to the issuing justice to infer that these parking stalls are the same as the tandem stall 353. It is important to remember that an issuing justice is expected to apply practical, common sense when assessing whether the statutory pre-conditions to issue a warrant have been met. Again, it is not whether the issuing justice should have done so - the inquiry is "could" have properly done so on the evidence.

[47] On September 1st, 2nd, 3rd and 4th, 2017 the tracker on Mr. Kim's BMW indicated that the vehicle attended Brighouse Way. On September 5, 2017 Mr. Kim was observed driving his BMW with Pikientio as a passenger entering the secure parkade at Capstan Way at 12:49. At 13:12 Mr. Kim's BMW was driven to Brighouse Way and parked outside of the parkade. Shortly after that, Mr. Kim's vehicle entered the secure parkade at Brighouse Way. At 15:04 Coddett was observed driving away from Brighouse Way. At 15:18 a black Mercedes registered to Jacob Pereira left the area of Brighouse Way. The observations between September 1st and 5th, 2017 indicated that Mr. Kim and/or his vehicle attended Brighouse Way on several consecutive days and others such as Coddett and Pikientio - active traffickers for Green Planet - also attended. This is also the fist observation of a vehicle associated to Mr. Pereira.

[48] On September 6, 2017 Mr. Kim is observed as a passenger in a white BMW driven by Mr. Coddett and another man was in the backseat. At 12:44 the Coddett vehicle arrived at Brighouse Way and entered the secure underground parkade. At 12:54 the Coddett vehicle departed the parkade with Mr. Coddett as the driver and Mr. Kim as the passenger. At 14:45 the Coddett vehicle returned to Brighouse Way with Mr. Kim as the passenger. At 14:55 Mr. Coddett departed the underground parkade alone in his vehicle. Next, Coddett was observed parked on Brighouse Way near the underground parkade while Pikientio walked out of the underground parkade and got into a black BMW registered to Szucs and drove it into the underground parkade. Pikientio then walked out of the underground parkade and got into Coddett's vehicle and together then entered the underground parkade. At 15:17 the black BMW departed the underground parkade. This is another significant sequence as it demonstrates that various members of Green Planet attended at Brighouse Way and have equal access to the secure parkade. It is also provides a further evidentiary link among members of Green Planet, Mr. Szucs and Brighouse Way. Again, it is not reasonable to infer that these individuals are congregating serendipitously inside the secure parkade. In my view the only reasonable inference to be drawn given the repeated attendances at Brighouse Way and access to the secure parkade is that these individuals are attending Unit 1204 in connection with their drug trafficking operations.

[49] September 7, 2017 was the final day of surveillance. The tracker on Mr. Kim's BMW indicated that the vehicle was mobile throughout the night and shortly after midnight it travelled to the area of Capstan Way and then went to other locations before eventually driving to Brighouse Way. Eventually, Mr. Kim's vehicle returned to the area of his residence. At 11:01 Mr. Kim's BMW left Mr. Kim's residence and went to Capstan Way where Mr. Kim was observed driving into the secure parkade. At 11:44 Mr. Kim left Capstan Way and drove to Brighouse Way. At 13:21 the black BMW arrived at Brighouse Way with K. Latimer as a passenger and entered the underground parkade. Again, this is another example of Mr. Kim's attendance at both Capstan Way and Brighouse Way which, when considered in the assessment of the totality of circumstances, provides a further basis to infer the connection among the Green Planet operation and unit 1204 Brighouse Way.

[50] Beginning at paragraph 124 the affiant sets out a summary of his beliefs regarding the Green Planet Operation. He includes references to the use of the phones and the role of the operation managers. In the section entitled "Sophistication and Organization" the affiant sets out his belief regarding the Green Planet operation based on the information obtained during the investigation and his experience. At paragraphs 137 and 138 of the ITO, in the section titled "Stash Sites", the affiant summarizes the reasons he believes both Capstan Way and Brighouse Way are used as stash sites for the Green Planet drug operation. I have commented on the significance of the observations regarding Brighouse Way throughout my review of the ITO.

[51] Having canvassed in some detail the events in August and September 2017, I will now address the specific issues raised by the applicants. In doing so, I am mindful of the legal principles that guide my analysis which I discussed earlier in these reasons. My role in reviewing the validity of a search warrant is to consider whether the material filed in support of the warrant could support the issuance of the warrant. Also, that the standard of reasonable and probable grounds is one of reasonable probability or credibly-based probability and not proof beyond a reasonable doubt. As I have already alluded to in these reasons, an issuing justice may draw reasonable inferences from the evidence in the ITO.

Is there sufficient evidence in the ITO to believe that Unit 1204 is being accessed by the targets?

[52] I agree with the applicants that there is no information that any of the targets of the investigation enter Unit 1204. However, that factor alone is not dispositive of the issue. As stated earlier, whether reasonable grounds exist requires a consideration of the totality of the circumstances.

[53] The applicants submit that there is no information to link the parking stall 353 to unit 1204 nor is there any information to support the assertion in the ITO that the parking stall is associated to unit 1204. They argue these statements are bald assertions that cannot be supported by the contents of the ITO. They also submit that the Form K is of no assistance because it provides no information linking parking stall 353 to Unit 1204. To engage in the analysis as suggested by the applicants would be to dissect the ITO in a piecemeal fashion. The applicants' arguments promote an approach which isolates one paragraph at the exclusion of all others rather than engaging in a consideration of the totality of circumstances on a "practical, non-technical, and common sense basis". (Liu, para. 39) I decline to do this.

[54] While I accept that the Form K does not indicate parking stall 353 is assigned to Unit 1204, there is a body of information that supports that inference that I will consider. Firstly, the Form K tenancy agreement identifies a person named Csongor Szucs as the tenant for unit 1204 and his email contact information is greenplan3t@gmail.com. This provides a logical link between Mr. Szucs and the Green Planet operation. I am not prepared to assume that the email is simply a coincidence.

[55] With respect to Mr. Szucs, the applicants point to paragraph 134(j) of the ITO where the affiant says that he is "unable to identify any specific role he is engaged in related to the dial-a-dope operation other than acting as a nominee" and "I believe that Szucs may play a logistical role" to demonstrate that there is no basis for the inference that Szucs, and hence Unit 1204, have a connection to the drug operation. However, that ignores the fact that the email Mr. Szucs provided refers to Green Planet, in combination with all of the other information contained in the ITO. As I said, the approach suggested by the applicants offends the well-established procedure a reviewing judge is obligated to follow. It is important to remember that a search warrant is an investigative tool and the ITO provides the details of the investigation thus far. In paragraph 134(j) the affiant properly sets out what he knows about Mr. Szucs' role in the operation at that stage. In my view the applicants suggest too narrow of a focus on a single paragraph in the ITO to the exclusion of all of the other information.

[56] There are several other factors that link unit 1204, parking stall 353 and the Green Planet drug operation together. I have considered the frequency by which Mr. Kim, Mr. Pikientio and others attended at the secure parkade at Brighouse and the fact that they all park their vehicles in the same area either in or near to stall 353. These observations include occasions when vehicles registered to Mr. Szucs are parked in stall 353 and Mr. Szucs is observed driving vehicles in and out of the parkade from stall 353. Given the connection between Mr. Szucs and his vehicles to stall 353 I do not consider the statement "parking stall associated to 1204" to be a conclusory statement. It is reasonable to infer that Mr. Szucs the tenant of 1204 would park in the parking stall associated to 1204.

[57] There is no evidence to suggest that anyone other than Mr. Szucs resides at Brighouse Way, yet Mr. Kim frequently attends, sometimes multiple times per day. Another significant factor is that Mr. Kim has access to the secure parkade which would support the inference that he possesses a fob. I have set out the number of occasions where Mr. Kim drove in and out of the secure parkade unassisted. There were occasions when his associates did the same. It is reasonable to infer that the frequency of attendance at Brighouse Way by various members of the Green Plant drug operation is not coincidental. The numerous times observed between the meet-up of these various members, combined with their known associative relationships dispel any assumption that their meetings were anything but orchestrated. Indeed, the observations on August 29 and 30, 2017 displace any suggestion that Mr. Kim, Mr. Latimer, Mr. Pikientio and others congregated in the secure parkade of Brighouse Way without any connection to Mr. Szucs or Unit 1204. It is reasonable to infer that their collective attendance at Brighouse Way is directly associated to the running of their business. It is also reasonable to infer that they do so in Unit 1204.

[58] I acknowledge that Brighouse Way is a large residential tower. However, when I consider the totality of the circumstances I am satisfied that it is reasonable to infer that the attendance of Mr. Kim and his Green Planet associates at Brighouse Way is for the sole purpose of attending Unit 1204.

Are there reasonable grounds to believe that a search of Unit 1204 will afford evidence of a named offence?

[59] As I have already stated, the applicants concede that the ITO contains evidence of a drug trafficking dial-a-dope operation. However, they submit the ITO does not contain sufficient information to bridge the gap between the commission of those offences and grounds to believe that evidence of the offences will be located at Unit 1204. The applicants rely on Liu and Sunner to support their position.

[60] In Liu, the appellants were convicted at trial of possession of 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 in possession of 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). In finding that the ITO did not disclose a basis on which the issuing judge could conclude that there was a reasonable probability drugs were being stored at McKay Avenue, the Court considered the fact that the police did not observe the appellants departing from McKay Avenue before attending Soiles' residence. The Court concluded there was a "gap in the information as to the appellants' point of origin prior to their alleged delivery of drugs to Regiment Square" (para. 45). The theory was the drugs were stored at McKay Avenue and after delivering them to Regiment Square, the appellants returned to McKay Avenue with the money from the sale of the previous delivery. However, the warrant did not include currency as an item that was to be searched for.

[61] In Sunner, as in this case, there was no issue that drug offences had occurred. 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 evidence of the drug offences would be found at the residence in question. Unlike the targets in this case, 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, noting in part, 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 assist the issuing justice to arrive at the opposite conclusion.

[62] The facts in Liu and Sunner are easily distinguishable from the circumstances in this case. As I have canvassed in detail earlier in these reasons, there is a discernable pattern of Mr. Kim and other members of the Green Planet operation attending at Brighouse Way. There is a discernible pattern of the Green Planet members entering the secure parkade and parking their vehicles in the stalls for Unit 1204. There is evidence that Mr. Szucs rented Unit 1204 and was observed in the secure parkade along with other members of the Green Planet organization. There is no basis to believe that this was simply a coincidence. Also, there is ample evidence that Green Planet is an active, well-organized drug trafficking network run by managers who control the Master Phone. There is evidence that Mr. Kim has attended Brighouse Way while in possession of the Master Phone. The evidence also established that during the day, the runners met with others in their network including Mr. Kim for short meetings which were consistent with re-loading the runners and collecting the proceeds from the prior sales.

[63] Paragraph 146 of the ITO, sets out a list of things expected to be located inside the residence that will afford evidence of the offences. In addition to controlled substances and precursors, the list includes things associated with running the drug trafficking network including detailed ledgers, detailed notes, drug score sheets, scales, shift schedules, vehicle purchase and insurance documents and various other items necessary to manage the day-to-day operation of a complex dial-a-dope operation. In other words, the purpose of the search was not simply for drugs but for items associated to the management of a sophisticated and well-organized dial-a-dope business.

[64] For the reasons discussed above, I find that the circumstances presented in the ITO rise above mere speculation or assumptions which constituted fatal flaws in the ITOs at issue in both Sunner and Liu. Based on my consideration of the totality of circumstances, I am satisfied that there was a body of information that was capable of supporting an inference that unit 1204 was connected to, or associated with Green Planet's drug trafficking operations, and that evidence of that drug operation would be located at unit 1204. The frequency with which the noted individuals attended Brighouse and the stall of interest, overcomes any speculation of coincidence. On an objective assessment of the circumstances, these factors together furnished a sufficiently reliable basis upon which the issuing justice could issue the warrant for unit 1204.

Conclusion

[65] I am satisfied that the issuing justice could have been satisfied that there were reasonable and probable grounds to believe that evidence of the offences would be found at Unit 1204 - 5177 Brighouse Way, Richmond, BC.

[66] Accordingly, the application is dismissed.

"Devlin J."

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