

CANADA / JUDGMENT

R. v. Latimer

2020 BCSC 2173

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 2173 R. v. Latimer IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Latimer, 2020 BCSC 2173 Date: 20201026 Docket: 27798-1; 27798-23 Registry: Vancouver Regina v. Kyle Latimer Craig Latimer Jacob Pereira Anduele Pikientio Csongor Szucs Restriction on publication: A publication ban has been automatically imposed under s. 648(1) of the Criminal Code of Canada restricting the publication, broadcasting or transmission in any way regarding any portion of the trial at which the jury is not present. This publication ban applies until the jury has retired to consider its verdict Before: The Honourable Madam Justice Ker Oral Ruling on Voir Dire #8 Challenge to Facial Validity of ITO for a Production Order dated July 7, 2017 Counsel for the Crown: M. Loda T.V. Warren Counsel for the Accused Kyle Latimer: J. Narwal No other appearances Place and Date of Trial/Hearing: Vancouver, B.C. October 19-21, 2020 Place and Date of Judgment: Vancouver, B.C. October 26, 2020

[1] This Ruling was delivered as oral reasons. They have since been edited for distribution.

Introduction

- [2] The accused Kyle Latimer, Craig Latimer, and Csongor Szucs are charged with several offences under the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA], as well as criminal organization conspiracy and weapons offences under the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Two other accused, Jacob Pereira and Anduele Pikientio, entered guilty pleas to possession for the purpose of trafficking and are no longer part of the proceedings on this indictment.
- [3] The charges arise as a result of Project Territory, an investigation that was spawned from "Task Force Tourniquet" in the spring of 2017. Task Force Tourniquet was a proactive taskforce that the Vancouver Police Department (the "VPD") and other neighbouring police agencies commenced in the spring of 2017 to investigate a number of alleged criminal groups operating in the Lower Mainland of British Columbia that were believed to be in conflict with one another and responsible for numerous acts of violence across the Lower Mainland. Project Territory is the investigation of the alleged drug-trafficking activities of two different groups, the Kang group and the Latimer group.

- [4] Three different direct indictments charging a total of 12 individuals have been preferred in respect of Project Territory.
- [5] A brief background overview to the investigation can be found in my reasons on another application, *R. v. Kang*, 2019 BCSC 2109 at paras. 19-32, which I incorporate into this set of reasons by reference hereto.
- [6] Kyle Latimer has filed an application challenging the facial validity of the information to obtain (the "ITO") filed in support of a production order directing that the B.C. Corrections Branch prepare and produce documents and/or data in its possession and control related to:
- i. audio recordings of telephone calls and associated call detail records for Sameet Kang for the time period of May 31, 2017, to July 7, 2017, inclusive; and ii. call detail records of attempted telephone calls for Sameet Kang for the time period of May 31, 2017, to July 7, 2017, inclusive. (Collectively "Sam Kang's jail call records".)
- [7] Overall, Mr. Latimer contends that the ITO does not establish reasonable grounds that the records sought, that is Sam Kang's jail call records, will afford evidence of the named offences. In support of his overall contention that the ITO suffers from facial invalidity, Mr. Latimer advances six points that he asserts establish the flaws in the ITO such that it fails to establish the third precondition for the issuance of the production order: that the records sought will afford evidence of the named offences.
- [8] Those six points summarily are as follows:
- i. conclusory statements about membership in the "Kang group";[1] ii. an insufficient link between Sameet Kang and the named offences;[2] iii. no link between Sameet Kang and Manveer Braich, Gurvinder Randhawa, Jasondeep Singh Uppal, or Csongor Szucs;[3] iv. insufficient grounds that #907-1221 Bidwell Street was a "stash house";[4]
 - v. insufficient reliability of two confidential informers;[5] and vi. the experience of the officer and the reasonable grounds inquiry.[6]
- [9] An alternative point advanced by Mr. Latimer is that the scope of the order is unreasonable in that it fails to honour the minimal intrusion or incrementalism principle of s. 8 of the Charter as referred to by Mr. Justice Sproat in *R. v. Rogers Communications Partnership*, 2016 ONSC 70 [Rogers Communications].
- [10] The Crown's position is that the ITO establishes reasonable grounds to support the issuance of the production order in respect of Sam Kang's jail call records. They argue that the ITO, viewed in its totality, provides ample grounds to conclude that the jail call records sought would afford evidence in respect of the commission of the named offences outlined in the ITO.

- [11] In an earlier ruling issued in this case, indexed as R. v. Latimer, 2020 BCSC 488 [Brighthouse Ruling], I determined that the applicant and his co-accused Csongor Szucs had standing and had established a reasonable expectation of privacy in materials seized from two locations, Brighthouse Way and Pacific Rim Estates. As the CCTV footage, fob records, and a Form K had been obtained without prior authorizations, the searches were found to have breached the s. 8 rights of Mr. Latimer and Mr. Szucs.
- [12] In another ruling indexed as R. v. Kang, 2020 BCSC 2379, I ruled that when it comes to excising information from an ITO, it is to be excised only as against the individual whose Charter rights have been breached. The defence excision-for-all approach was rejected.
- [13] As a result of these rulings, counsel agree and have excised the paragraphs or excerpts of paragraphs that contain information obtained in breach of Mr. Latimer's s. 8 rights as outlined in the Brighthouse Ruling. The parties agree that only Mr. Latimer has standing to challenge the production order, as he is the only person on this indictment whose conversations with Sameet Kang were captured in the jail calls included in the July 7, 2017 production order. The Evidence on The Voir Dire
- [14] This application proceeded by way of submissions from counsel. As a result of my earlier rulings, an edited ITO was filed as Exhibit #1 on this application. The contents of the ITO were canvassed by the parties during their submissions. The production order issued pursuant to s. 487.014 of the Code authorized the Corrections Branch within the Provincial Ministry of Public Safety and Solicitor General to prepare and produce to Constable Nielson the documents and data that are collectively described as Sam Kang's jail call records.
- [15] The ITO in issue is lengthy, 158 pages, and is divided into three distinct components:
- i. background and informant information; ii. details of the investigation; and iii. confirmation of the records and justification for the requests.[7]
- [16] Constable Matthew Nielson was the affiant and the ITO was drafted to obtain five different orders: a vehicle tracker; production orders for security video footage and electronic key fob records for two strata buildings; the production order in respect of Sam Kang's jail call records; and a sealing order in respect of the applications for the four noted above orders.
- [17] A review of the ITO as a whole, as well as the detailed architecture of it outlined in Appendix A, establishes that the first 85 paragraphs of the ITO are largely introductory matters, an overview of the investigation and the offences being investigated. This part of the ITO provided the authorizing justice with a roadmap to the investigation and the source materials contained further on in the ITO. The ITO details the investigation, which began as a larger task force and investigation. Through the combination of physical surveillance, informant information, and other investigative sources, the investigation came to focus on Manveer Braich and a number of other men he associated with, including the three Kang brothers--Sameet, Randeep, and Gary--and what appeared to be behaviour consistent with a drug-trafficking enterprise.

- [18] Members of the VPD Project Territory group focused their investigation on a number of people outlined in the ITO and the places they were frequenting, specifically a unit in a strata building on Bidwell Street in Vancouver, B.C. The investigation relied on physical surveillance, review of CCTV security video, and fob records in residential locations for the targets away from Bidwell Street. This led the investigation to form the opinion that Bidwell Street was a stash house and that Randeep Kang, Manveer Braich and others were storing drug products in Bidwell Street and using it as the location where they obtained their drugs to provide to other associates for further distribution.
- [19] On May 1, 2017, Sameet Kang was convicted of possession for the purpose of trafficking a Schedule I substance and sentenced to two years' less a day imprisonment.
- [20] Accordingly, during the timeframe of the investigation and more particularly the time period covered by the activities observed by Project Territory investigators as outlined in the ITO, Sameet Kang was serving a sentence of imprisonment and therefore was not in the community under physical surveillance. This fact explains why he is not extensively referred to in the ITO.
- [21] In order for the production orders sought in respect of Sam Kang's jail call records to issue, the affiant must set out in the ITO reasonable grounds to believe that:
- i. the records sought existed; ii. the offences under investigation (the "named offences") have been or will be committed; and iii. the records sought will afford evidence respecting the commission of the offences.
- [22] Mr. Latimer concedes the ITO contains sufficient information to establish the first two criteria: the records exist and the named offences have been committed. He maintains, however, there is nothing in the ITO which would support an inference that Sameet Kang is associated to this activity or that the records sought, specifically his recorded telephone calls and call detail records, would afford evidence of the offences.
- [23] I will consider the contents of the ITO in detail during my analysis, but will first canvass the legal principles to be applied on the review of the facial validity of a production order. The Governing Legal Principles
- [24] The parties do not disagree on the legal principles which govern the review of the validity of a prior authorization, be it a wiretap, a search warrant, or a production order. R. v. Garofoli, [1990] 2 S.C.R. 1421 at 1452, sets out the test to determine whether the production order was properly issued. See also: R. v. Nero, 2016 ONCA 160 at para. 69.

- [25] The test applied by the reviewing judge is whether the ITO contains sufficient reliable evidence that might reasonably be believed, on the basis of which the authorizing justice of the peace could have concluded that the statutory conditions precedent required to be established had been met: *Garofoli* at 1452; *R. v. Araujo*, 2000 SCC 65 at paras. 51, 54; *R. v. Morelli*, 2010 SCC 8 at para. 40; *Nero* at paras. 66, 70; *R. v. Vu*, 2013 SCC 60 at para. 16 [*Vu* (SCC)].
- [26] The applicant bears the onus of establishing that the ITO affidavit on which the production order issued is insufficient: *R. v. Campbell*, 2011 SCC 32 at para. 14.
- [27] It is critical to recall that in conducting a review of the ITO, that the reviewing judge not do so on a piecemeal dissection of individual items of evidence devoid of their context in a search for alternative exculpatory inferences: *Nero* at para. 68; *R. v. Liu*, 2014 BCCA 166 at para. 39. Rather, the information is to be examined in its totality - it is a contextual review of the record conducted in a practical, non-technical, and common sense perspective: *Nero* at para. 68; *Liu* at para. 39; *Araujo* at para. 54.
- [28] Deconstruction, parsing, dissection, or microscopic analysis of the paragraphs or averments in the ITO is to be eschewed. All the grounds must be assessed together as a whole: *R. v. Saunders*, 2003 NLCA 63 at paras. 9, 11, 12, 15, aff'd 2004 SCC 70; *Araujo* at para. 54; *R. v. Whitaker*, 2008 BCCA 174 at para. 41, leave ref'd [2008] S.C.C.A. No. 296.
- [29] The evidence in an ITO cannot be isolated or parsed one item at a time because each piece of evidence colours other pieces of evidence. Thus, a fuller, more complete picture emerges when all the evidence is considered together: *Whitaker* at para. 41, citing *R. v. Lam*, 2002 BCCA 99 at para. 10.
- [30] Insofar as the reasonable grounds standard is concerned, it is well-known and not as high as the civil standard of proof on a balance of probabilities: *Whitaker* at para. 39. Rather, the standard is one of reasonable belief, a standard lower than the balance of probabilities: *R. v. Glendinning*, 2019 BCCA 365 at para. 7.
- [31] As Mr. Justice Frankel noted in *R. v. Vu*, 2011 BCCA 536 at para. 39 [*Vu* (BCCA)], rev'd on other grounds 2013 SCC 60, reasonable grounds "is the point at which credibly-based probability replaces suspicion". Deciding whether the standard has been satisfied therefore requires a "practical, non-technical, and common-sense assessment of the totality of the circumstances": *Vu* (BCCA) at para. 39.
- [32] Two other governing principles are engaged by the issues raised on this application: the drawing of inferences and information from confidential informers ("CIs").
- [33] Both the authorizing justice and the reviewing judge are entitled to draw reasonable inferences from the contents of the ITO: *Vu* (BCCA) at para. 40. As part of the process, in determining whether the reasonable grounds standard has been satisfied, both the authorizing justice and the reviewing judge are entitled to "put two and two together": *Whitaker* at para. 42. Moreover, the simple fact that an item of evidence in the ITO may

support more than one inference or even a contrary inference to one supportive of a condition precedent is, as Mr. Justice Watt stated in *Nero* at para. 70, "of no moment". The inquiry begins and ends with an assessment of whether the ITO contains reliable evidence that might reasonably be believed on the basis of which the production order could have issued: *Nero* at para. 70; *Morelli* at para. 40.

- [34] The fact that information in an ITO comes from CIs does not mean that a production order or any other authorization should be set aside. It is well settled that hearsay statements of a CI can provide reasonable grounds to justify a search: *Garofoli* at 1456-1457. In *Nero*, Watt J.A. had this to say about the issue of CI's:
- [76] A final point about information provided by CIs. As established in *R. v. Debot*, [1989] 2 S.C.R. 1140, at paras. 53, 63, it is not necessary for investigators to corroborate each exquisite detail of the information provided. The ITO, however, should describe what has been done to confirm the credibility of the source and the reliability of his or her information so that the issuing and reviewing justice can properly assess it.
- [35] In assessing the reliability of information provided by CIs, both authorizing justices and reviewing judges examine three components:
- i. the compelling nature of the CI's information--is the CI's information detailed; ii. the credibility of the CI as assessed through prior reliability assertions; and iii. the extent to which the CI information is corroborated by independent police investigation. See *R. v. Debot*, [1989] 2 S.C.R. 1140 at 1166; *Nero* at para. 76.
- [36] Deficiencies in one area can be overcome by strengths in another component: *Debot* at 1166; *Garofoli* at 1456-1457.
- [37] Insofar as corroboration is concerned, CIs can corroborate each other: *Saunders (NLCA)* at paras. 15-16. Moreover, it is not necessary that the criminal elements of the tip be corroborated by the police: *R. v. Caissey*, 2007 ABCA 380 at paras. 23-25, *aff'd* 2008 SCC 65.
- [38] *Caissey* demonstrates that police investigation of a first-time informer's tip about being in the accused's apartment and seeing marihuana for resale can rely on innocent details to substantiate the reliability of an informer. In *Caissey*, the first-time informer provided details about the inside of the apartment, the suspect's vehicle, and the name of the suspect's roommate. Police investigation independently confirmed the name of the roommate and the vehicle identification. The majority of the Court of Appeal were of the view that the confirmation of the innocent details tended to substantiate the informant's reliability. The dissenting judge opined that only corroboration of some criminal particular of the offence provided assurance that the first-time informer's allegations were not made maliciously. The *as-of-right* appeal to the Supreme Court of Canada was dismissed, with the court agreeing with the test adopted by the majority in the Alberta Court of Appeal.

[39] With these legal principles in mind, I will turn to my analysis of the contents of the ITO filed on this voir dire.

Analysis

- [40] I begin by first noting that the applicant's approach to assessing the sufficiency of the ITO is completely inconsistent with the approach mandated by the jurisprudence. The applicant has dissected the ITO, parsed paragraphs, and even questioned the tenses used in particular paragraphs and averments. As noted previously, the information in the ITO is to be assessed as a whole; it is a contextual review.
- [41] There is no issue with respect to two of the three preconditions. The applicant concedes the ITO contains reliable evidence that disclosed reasonable grounds to believe that the records exist and that the named offences under investigation have been committed.
- [42] A careful review of the ITO as a whole clearly establishes these two conditions precedent. The ITO outlined in exquisite detail the physical surveillance of five named targets, specifically:
- i. Manveer Braich; ii. Randeep Kang (Sameet's Kang's brother); iii. Gurvinder Randhawa; iv. Jasondeep Uppal; and
 - v. Csongor Szucs; as well as others who appear in the surveillance.
- [43] The ITO lists 14 named offences that relate to conspiracy, trafficking in controlled substances, and possession of controlled substances for the purpose of trafficking.
- [44] As noted earlier, paras. 1-85 of the ITO provide an overview. This is the introductory section where the affiant sets out his experience, including his years of training and experience in drug investigations while an auxiliary officer with the RCMP for three years, and as a border services officer with Canada Border Services Agency ("CBSA") for eight years. It also sets out definitions of terms used in the ITO (paras. 35-46) and offences under investigation (paras. 21-34), along with the targets of the investigation.
- [45] At paras. 50-55 and 61-85 of the ITO, the affiant provides the roadmap overview to the objectives of the investigation and a summary of the investigation. In these two sections of the ITO, the affiant provides a summary overview of the various observations of behaviour and movements of the targets. These observations include the repeated attendances of some of the targets at a location on Bidwell Street where none of the targets reside; bags being either brought into the Bidwell location or removed from it; brief meetings in the shelter of vehicles or underground parking lots after attendances at Bidwell Street where bags were exchanged; and on one occasion, June 19, 2017, the arrest of one of the targets with a backpack containing cocaine and a substance believed to be either heroin and/or fentanyl.

- [46] Paragraphs 85-94 outline the investigative steps undertaken to identify six named individuals, the five targets, and the applicant. The inquiries yielded residential addresses, some passport photographs, descriptions of vehicles registered in their names, their B.C. driver's licence numbers, dates of birth, physical descriptions, and the like.
- [47] Sameet Kang is not included in this list, not surprisingly, as he was not part of the physical surveillance because he was serving a sentence of imprisonment at the time.
- [48] The next component of the ITO relates to the two informers, A and B (paras. 98-102). Although only five paragraphs numerically, this section is 22 pages in length. The architecture is such that the affiant sets out the informants' pedigree, the information provided, broken down by detail, the source of the information (redacted), and the steps undertaken to corroborate the informers' information.
- [49] Informer A provides 13 points of information that relate largely to Manveer Braich and his involvement in drug-trafficking activities with the Kang group.
- [50] While the Kang group is not specifically defined in any one location in the ITO, it is clear from the totality of the ITO that the Kang group includes the named targets, with perhaps the exception of Mr. Szucs, and includes Sameet Kang prior to his imprisonment. This is based on the totality of the observations of activities, meetings, get-togethers, and the like, where frequently one of the common denominators is one of the three Kang brothers.
- [51] Informant A provided the following details and the affiant sets out either direct corroboration or unrelated drug investigation details that tend to corroborate A's information:
- i. Manveer Braich is a drug courier who goes by the nickname "Super"; ii. Braich's phone number; iii. Braich lives in Surrey; iv. Braich is a South Asian with a long beard;
 - v. Braich transports drugs; vi. Braich drives a grey sedan; vii. Braich transports drugs all over the Lower Mainland; viii. This detail is redacted; ix. Braich couriers drugs to the Kang group;
 - x. Braich stores drugs in a stash house; xi. Sameet Kang runs a drug-trafficking operation in the Lower Mainland; xii. Sameet Kang's brother Randeep Kang assists Sameet in running Sameet's drug-trafficking lines; xiii. Randeep Kang has taken over running Sameet Kang's drug-trafficking operations while Sameet is in jail.
- [52] This last point does not say Randeep Kang has taken over running the lines permanently. The use of the word "while" denotes the temporary state of affairs.
- [53] Informant B provided the following details and the affidavit sets out either direct corroboration or unrelated drug investigation details that tend to corroborate B's information:

- i. Randeep Kang is running the Kang drug operations because Sameet Kang is in jail. This point is similar to Informer A's point. Neither pieces of information support the inference of a permanent state of affairs or that Sameet Kang is completely removed from the business;
 - ii. Randeep Kang's phone number; iii. Gurvinder Randhawa is an associate of the Kang brothers; iv. Randhawa is involved in the drug operation of the Kang group;
- v. Randhawa has a silver Honda Accord; vi. Randhawa's phone number; vii. Randhawa is described as a brown male.
- [54] In so far as the CIs' points of information are concerned, there is ample evidence in the ITO, both in the informer section of the ITO and amplified in the details of the investigation portion of the ITO, that confirms or corroborates the information provided. Moreover, the two CIs specifically corroborate each other on the role of Sameet Kang and Randeep Kang.
- [55] The details of the investigation section of the ITO is found in paras. 103-181, and covers 91 pages of the ITO.
- [56] Appendix A to this ruling provides a brief summary of the paragraphs of the ITO covering the details of the investigation. Crown counsel in her oral submissions took the court through the ITO in painstaking detail to establish that there is a large body of information establishing the reasonable grounds that the named offences have been committed. I do not propose to itemize the details. I have been through the ITO, and it more than sufficiently establishes clear grounds to believe that Manveer Braich, Gurvinder Randhawa, and Jasondeep Uppal were involved in a drug-trafficking enterprise that worked out of a stash house located on Bidwell Street. The common denominator to the Bidwell Street location and these men is Randeep Kang.
- [57] The surveillance observations began in late April 2017. Manveer Braich was observed to drive in a manner consistent with conducting counter surveillance.
- [58] On May 4, 2017, Braich was followed to the Bidwell location, and approximately 30 minutes later he left Bidwell and drove to Richmond, B.C. Physical surveillance followed him to Brighthouse Way where he met with Jacob Pereira for a period of time. The review of CCTV footage and fob records for Bidwell and Brighthouse reveals conduct consistent with drug-trafficking behaviours on the part of Braich and Pereira.
- [59] Other investigative information outlined in the ITO reveals that Mr. Braich repeatedly resorted to using rental cars for short periods of time when he was out driving around, attending Bidwell, and going elsewhere over the two-month period outlined in the ITO, behaviour consistent with drug-trafficking activities.
- [60] Randeep Kang was observed in the CCTV footage to attend at the Bidwell location on May 6, 2017, along with another male identified as Amrit Bains. On May 9 and 10, 2017, Mr. Kang attended Bidwell. On May 10, the CCTV footage discloses Mr. Kang carrying a weighted reusable shopping bag into and out of Bidwell.

- [61] On May 13, 2017, Mr. Kang introduced Gurvinder Randhawa to the suite on Bidwell Street, and thereafter Mr. Randhawa was observed to make a number of attendances at the suite on Bidwell. The attendances range between eight minutes and in excess of three hours. Between May 13 and May 23, 2017, Mr. Randhawa was observed attending Bidwell a total of eight times. Mr. Randhawa carried weighted bags either in or out of the location on his attendances.
- [62] Randeep Kang attended Bidwell again on May 18, 2017. Then, on May 28, 2017, he was seen in the company of Gurvinder Randhawa.
- [63] Observations of Mr. Randhawa's driving behaviour demonstrate counter surveillance measures being undertaken. The ITO outlines that on June 3, 2017, Braich and Randhawa were observed together and attended Bidwell together in Mr. Randhawa's vehicle. They were observed to carry either a plastic bag (Braich) or a few dark objects (Randhawa) into Bidwell. Over two hours later, they left with Mr. Randhawa driving in a suspicious, erratic manner consistent with counter surveillance measures.
- [64] Thus far it can be seen that the ITO has set out information that is consistent with an association or relationship between Randeep Kang, Manveer Braich, Gurvinder Randhawa and others that orbits around brief attendances at Bidwell Street. Other details, when considered collectively, establish behaviour consistent with drug-trafficking activities.
- [65] In late June 2017, based on the CCTV footage and fob records reviewed, the affiant and the investigation became aware of more attendances at Bidwell by Mr. Randhawa between May 24 and June 14, 2017. The attendances were similar to previous observations. They were brief in duration, and weighted bags were being taken into or out of Bidwell Street. Between May 24 and June 19, 2017, Mr. Randhawa attended Bidwell approximately 14 times, once with Mr. Braich.
- [66] On June 7, 2017, Mr. Uppal made his first attendance at Bidwell Street and used the key fob that Randeep Kang had previously used. Between June 7 and June 14, 2017, Mr. Uppal attended Bidwell Street on six different occasions and engaged in behaviour similar to that of Mr. Randhawa.
- [67] On June 19, 2017, surveillance followed Mr. Randhawa to Bidwell Street and then out onto the streets of Vancouver. He was observed to meet with Mr. Pereira in circumstances consistent with him supplying Mr. Pereira with drugs. The surveillance was switched to Mr. Pereira and the travels of a beige backpack. Mr. Pereira attended the Pacific Rims Estates, a place where the applicant resided, met up with Mr. Szucs, and eventually left the backpack in Mr. Szucs's vehicle. Mr. Szucs was then followed by surveillance as he drove east on the Trans Canada Highway heading towards the interior of the province.

- [68] Mr. Szucs was eventually stopped by an RCMP officer at the direction of the VPD and arrested. A search of his vehicle revealed the beige backpack Mr. Pereira had been seen to be carrying. In the backpack were three packages totalling 759.33 grams of cocaine and 27.43 grams of a powder substance believed to be heroin or fentanyl. The details of this day's events and Mr. Szucs's arrest are outlined in another ruling indexed at R. v. Latimer, 2020 BCSC 685.
- [69] In addition to a significant body of evidence from physical surveillance and review of CCTV footage and fob records providing connections and associations between the various named targets, including Randeep Kang, and Bidwell Street, the ITO outlines that warrants authorizing the use of a tracking device and a transmission data recorder warrant (a "TDRW") were granted for the cellular phones of Manveer Braich and Randeep Kang. These warrants were granted on May 17, 2017, and reissued on May 23, 2017, once correcting information was supplied. The ITO included various cross-references to Manveer Braich and Randeep Kang through these two warrants, including a meeting on June 6, 2017, in West Vancouver.
- [70] As well, Gurvinder Randhawa's phone number (listed at paragraph 102.6 of the ITO under Informer B's information) shows up in the TDRW records for Randeep Kang, as calling Mr. Kang on May 23, June 2, and June 4, 2017.
- [71] As this brief review of the ITO clearly establishes, there is a significant body of evidence that might reasonably be believed on the basis of which the authorizing judge could have concluded that the named targets were engaged in the named offences. The question remains, however, whether there is sufficient reliable evidence, that might reasonably be believed, on the basis of which the authorizing justice could have concluded the records sought, Sam Kang's jail call records, would afford evidence with respect to the commission of the named offences.
- [72] If I were to accept the microscopic dissection approach advanced by the applicant, I might have concerns that this condition precedent had not been satisfied. However, as I have stated previously, that is not the approach to take. In addition to the information from Informer A and Informer B about Randeep Kang assisting his brother Sameet Kang in running his drug lines or drug-trafficking business, the ITO provides a basis to support the conclusion that the records sought will afford evidence of the commission of the named offence.
- [73] The affiant outlines at paragraph 195.8 of the ITO that the TDRW records for Randeep Kang indicate he received multiple incoming phone calls from a telephone number associated to a B.C. Corrections inmate telephone number. While it would have been helpful to outline the number of calls and the date range in which they occurred, that is not fatal to the ITO or the inferences available.

- [74] Counsel for the applicant argues that it is simply speculation to conclude that Randeep Kang and Sameet Kang were talking and that they were talking about the drug business. While one inference would be that Randeep Kang was talking to someone else, an equally consistent inference is that he was talking to his brother Sameet Kang. There are three equally plausible inferences as to what Randeep Kang and Sameet Kang were talking about: (1) family; (2) family and business; or (3) business. In my view, they are equally plausible inferences, and on that basis there is a sufficient evidentiary basis to issue the production order for the jail call records. Simply because there are other inferences available does not defeat the inferences consistent with the reasonable belief that the records will afford evidence of the named offences: *Nero* at paras. 70-71. As *Watts J.A.* held:
- [70] The test or standard a reviewing judge is to apply is whether the ITOs contained sufficient reliable evidence that might reasonably be believed on the basis of which the authorizing justice could have concluded that the conditions precedent required to be established had been met: *Garofoli*, at p. 1452; *R. v. Araujo*, 2000 SCC 65, [2000] 2 S.C.R. 992, at paras. 51, 54; *Sadikov*, at para. 84; *Beauchamp*, at para. 87; *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at para. 40.
- [71] Like the authorizing justice, the reviewing judge is entitled to draw reasonable inferences from the contents of the ITO. That an item of evidence in the ITO may support more than one inference, or even a contrary inference to one supportive of a condition precedent, is of no moment. The inquiry begins and ends with an assessment of whether the ITO contains reliable evidence that might reasonably be believed on the basis of which the warrant or order could have issued: *Morelli*, at para. 40; *Sadikov*, at para. 88.
- [75] Counsel for the applicant also contends that given all the ways that B.C. Corrections inmate calls are monitored and recorded, it makes it highly unlikely that individuals in custody are going to discuss an ongoing illegal enterprise over the telephone system. While that is one inference that could be drawn, an equally plausible inference is that parties will take the risk of discussing ongoing illegal activities, such as drug-trafficking enterprises, and hope that their recorded calls are not listened to before they are deleted. Alternate inferences do not negate each other: *Nero* at para. 71.
- [76] In my view, the foregoing inference that the targets would discuss illegal activities in their telephone calls is an entirely reasonable inference available from the totality of the evidence in the ITO especially, when considered in context, including:
- i. the activities and behaviour observed consistent with drug trafficking; ii. the established relationships and associations between the various targets; iii. Sameet Kang's record for drug trafficking; iv. Randeep Kang's record for drug trafficking;

- v. Sameet Kang's imprisonment; vi. the ongoing drug enterprise disclosed in the body of the ITO; vii. the information from the two CIs about Randeep Kang assisting his brother in his running his drug lines, and that Randeep Kang has taken over running Sameet's drug-trafficking operation while Sameet is in jail (paras. 99.3 and 102.1 of the ITO); and viii. the TDRW information that Randeep Kang received multiple calls from an inmate telephone number with B.C. Corrections.
- [77] Taken collectively, this information clearly establishes that the records sought would afford evidence of Randeep and Sameet Kang's discussions of the ongoing drug-trafficking business that Sameet Kang had and Randeep Kang was running while Sameet was in jail. To put it in a more vernacular way, the authorizing justice could put "two and two together" and reasonably infer, from the totality of the information provided, that Sameet Kang's jail call records would afford evidence of the named offences.
- [78] Informants A and B provided information that Sameet Kang ran a drug-trafficking business, that Randeep Kang assisted his brother in running the drug-trafficking lines, and that Randeep had taken over while Sameet was in jail. The two informants provided detailed information on a number of particulars with respect to the associated targets of Manveer Braich and Gurvinder Randhawa, as well as telephone numbers for these two targets and Randeep Kang. The investigation corroborated a number of aspects of the information from the two CIs, and the informants corroborated each other on the details of Randeep Kang assisting Sameet Kang and taking over running the drug operation while Sameet was in jail.
- [79] The fact that Randeep Kang received multiple calls from an inmate telephone number with B.C. Corrections, when considered within the context of the CI information, leads to the common sense inference that Sameet Kang and Randeep Kang would consult each other about the drug-trafficking operation. Adding common sense into the mix only further supports the inference that the two brothers would need to consult each other and discuss their drug-trafficking business from known and unknown telephone lines.
- [80] Accordingly, I am satisfied that the affidavit provides the requisite reasonable grounds upon which the authorizing justice could have concluded the records would afford evidence of the named offences.
- [81] The challenge to the facial validity of the production order is dismissed.
- [82] I turn now to the alternate argument advanced by the defence. Is the Production Order Unreasonable?
- [83] Counsel for Mr. Latimer relies upon the Rogers Communications decision as authority for the proposition that s. 8 includes a minimal intrusion principle in respect of the scope of the material that an authorization, like a production order, seeks. In the context of the case at bar, counsel contends that production orders must be framed in the narrowest of terms so that the search is as limited as reasonably necessary to achieve its objective, and is therefore minimally intrusive. Counsel for Mr. Latimer argues further that the principles of

incrementalism and minimal intrusions find their doctrinal genesis in the Supreme Court of Canada's decision in *Vu* at paras. 21-25.

- [84] In *Vu*, Justice Cromwell, writing for the court, determined that when it came to searches of a computer seized pursuant to a search warrant issued for a residence, law enforcement needed either a separate search warrant to access the contents of the computer, or specific authorization within the search warrant to permit a computer search. In reviewing the purpose of s. 8 of the Charter, Cromwell J. noted that there are two main ways to balance the competing interests of the right to be free of state interference and the legitimate needs of law enforcement. First, police must obtain prior authorization before conducting a search, and second, an authorized search must be conducted in a reasonable manner: *Vu* (SCC) at paras. 21-22. The reasonable manner component addressed in *Vu* is said to limit potential abuse of the authorization to search by ensuring the search is no more intrusive than reasonably necessary to achieve its objectives.
- [85] It must be remembered, however, that these comments in *Vu* were made in the context of the Crown respondent asserting that the search warrant for the residence authorized the additional search of the contents of the computer seized pursuant to the search warrant for the residence. The Supreme Court of Canada rejected that assertion and determined that either specific authorization to search computers found, or a subsequent search warrant, was required to search the contents of the seized computers.
- [86] On the basis of the *Rogers Communications* decision, Mr. Latimer's counsel contends that by seeking all of Sameet Kang's jail calls within a specified timeframe, the production order issued in this case was overbroad.
- [87] Crown counsel advanced a number of points to support their assertion that the minimal intrusion and incrementalism principles outlined in *Rogers Communications* are distinguishable and not applicable to the circumstances of this application. I will not outline them further as, in my view, the decision in *Rogers Communications* should be confined to its unusual circumstances.
- [88] Moreover, the reliance upon *Vu* as authority for the proposition that it has spawned a more general requirement of incrementalism and minimal intrusion for all prior authorizations ignores the clear limitations of the scope of the reasons in that case: *Vu* (SCC) at paras. 63-64.
- [89] Accordingly, I would not accede to defence counsel's submissions on *Rogers Communications* for the following two reasons.
- [90] First, although counsel contends *Rogers Communications* was cited with approval by the Supreme Court of Canada in *R. v. Marakah*, 2017 SCC 59, that is not entirely correct. To be sure, *Rogers Communications* is referred to in *Marakah*, but it is found in the dissenting opinion of Mr. Justice Moldaver at para. 140 and it is referred to there for an altogether different point: that individuals can maintain a reasonable expectation of privacy in

personal information stored with commercial entities such as telecommunication service providers.

- [91] Second, Rogers Communications involved a production order for what is commonly referred to as "tower-dump" records. Generally speaking, such an order directs one or more telecommunication service providers to prepare a record of the cellular traffic through a particular cell tower over a specified time period. Such an order usually requires cellular providers to produce the names and addresses of hundreds if not thousands of subscribers, who they called, who called them, their location at the time of the call, and the duration of the call; and some orders can require credit card information to be provided as well: Rogers Communications at para. 1.
- [92] In Justice Sproat's decision in Rogers Communications, the two service providers, Rogers and Telus, were served with a number of production orders in respect of an investigation into a string of jewellery store robberies. The breadth of the data captured by the production orders was enormous. The orders required the service providers to provide the cellphone records for all phones activated, transmitting, and receiving data through:
- a. all of the Telus towers proximate to 21 municipal addresses, meaning more than 21 towers would have to be dumped; and
 - b. 16 Rogers towers that had been identified through test calls made by investigators. Telus and Rogers estimated that compliance with the original production orders would require the disclosure of the personal information of thousands of individuals. Telus estimated 9,000 individuals and Rogers estimated that it would have to conduct 378 distinct searches and receive 200,000 records that pertained to 34,000 subscribers.
- [93] In resisting the production orders as served, Rogers and Telus applied to the Ontario Superior Court of Justice for a ruling that would make plain that production orders must be more specifically tailored: Rogers Telecommunications at para. 3.
- [94] Significantly, the challenge to the original production order was rendered moot as the Crown was permitted to revoke the original orders and the investigators sought a much narrower order, so their investigation could continue: Rogers Communications at para. 3.
- [95] Although the original production orders were revoked and the matter was, strictly speaking, moot, Sproat J. permitted Rogers and Telus to pursue their applications. Sproat J. issued a declaration that the production orders as issued authorized unreasonable searches and therefore breached the s. 8 rights of the Rogers and Telus subscribers: Rogers Communications at para. 43.
- [96] It is important to note, however, that no subscriber's s. 8 Charter rights were in fact breached, as the production orders were revoked and not acted upon. What Sproat J. did in the Rogers Communications decision was issue a set of guidelines to assist law enforcement and issuing justices in properly confining the expansive type of searches entailed in tower-dump production orders. Thus, Sproat J., as the reviewing judge on the application,

felt that future applications for tower-dump records could benefit from judicial guidance. To that end, the decision in *Rogers Communications* sets out the best practices guidelines for the police in Ontario when seeking to obtain production orders in relation to tower dumps: see paras. 64-66.

- [97] In *R. v. Baskaran*, 2020 ONCA 25, the appellants challenged the validity of a tower-dump order issued during the investigation of a series of tractor trailer thefts and robberies. The appellants appealed their convictions. One ground of appeal related to their contention that the tower-dump order in issue in that case was overly broad.
- [98] Mr. Justice Nordheimer, writing for the court, rejected the contention that the production order was overly broad. He found the tower-dump order to be narrow in scope, limited to six towers for two dates, all with specified timeframes: *Baskaran* at para. 21. Justice Nordheimer went on to note at para. 22 that authorizations inevitably intrude on the privacy interests of innocent persons, and then stated:
- [23] The issue is whether that inevitable intrusion has been limited to an acceptable degree. Put another way, is the search no more intrusive than is reasonably necessary to achieve its objective?: *R. v. Vu*, 2013 SCC 60, [2013] S.C.R. 657 at para. 22. As I have said, I agree with the trial judge that the June production order was carefully limited in this case. I also agree with the trial judge that the appellants bore the onus of establishing their overbreadth challenge to the production order. Their failure to put before the court the actual information that was obtained was fatal to that challenge. The decision in *Rogers Communications* was not referred to by the Court of Appeal in *Baskaran*.
- [99] While the decision in *Rogers Communications* represents a careful guideline judgment endeavouring to bring a measure of discipline to future production orders sought for tower-dump records in Ontario, it is not binding on this court. Moreover, the nature of the breadth of the records sought in the case at bar is nowhere near the broad scope apparent in *Rogers Communications*.
- [100] In my view, the July 7, 2017, production order in issue on this application was sufficiently limited such that the search was no more intrusive than was reasonably necessary to achieve its objective--the objective being affording evidence with respect to the commission of the named offences outlined in the ITO based on the total picture provided therein: *Vu* (SCC) at para. 22.
- [101] The investigators in this case only sought Sameet Kang's jail call records for a circumscribed period of time, approximately one month. The suggestion that only the call detail records should have been sought, or only calls from certain telephone numbers, for example Randeep Kang's known cellphone number, should have been sought, would unduly circumscribe the investigation by placing unrealistic blinders on the total picture available from the call information. It would also create unnecessary extra investigative steps that would result in inefficiencies for both the record holder and the investigator.

- [102] The overbreadth ground of attack on the production order in this application is dismissed.
- [103] That concludes my reasons on this application. "Ker J." Appendix 'A' Architecture of the July 7, 2017 ITO for Production Orders Paragraphs Affidavit Portion Background and Informant Information 1-13 Introduction of the affiant, his training, and understanding of drug trafficking 14-15 The affiant's source of knowledge 16-20 Authorizations sought 21-34 Offences being investigated 35-46 Locations, definitions and abbreviations 47-49 Surveillance report descriptions 50-55 Objectives of the investigation 56-60 Previous applications 61-85 Summary of the investigation 86-87 Inquiries: Manveer Braich 88 Inquiries: Randeep Kang 89 Inquiries: Kyle Latimer 90 Inquiries: Khaadim Coddett 91-92 Inquiries: Gurvinder Randhawa 93-94 Inquiries: Jasondeep Uppal 95-99 Informer "A" Information 100-102 Informer "B" Information Details of the Investigation 103-107 Braich's residence and suspicious driving 108-109 1221 Bidwell St. security video footage and fob record review 110-117 May 4 meeting between Braich and Pereira at Brighthouse 118-119 Identification of Randeep Kang and Amrit Bains from 1221 Bidwell St. security video footage 120-123 Surveillance of Braich's suspicious driving May 6, 7, 8, 2017 124-125 Randeep Kang's residence 126-127 Braich's rental vehicle history 128-130 Second residence associated to Braich 131-132 1221 Bidwell St. security video footage and fob record review for May 8-23 133-134 Identification of Randhawa from 1221 Bidwell St. security video footage 135-136 Police check of Randeep Kang and Randhawa together on May 28, in vehicle registered to Craig Latimer 137-138 Randhawa's suspicious driving behaviour 139-140 Second residence association to Randeep Kang 141-146 Randhawa's suspicious meetings 147-151 Undercover scenario #1 at YVR initiated on Amandeep Kang 152-163 Surveillance on Braich, Randeep Kang, Amandeep Kang, and Randhawa 164-168 1221 Bidwell St. security video footage and fob record review for May 24-June 14 169 Identification of Jasondeep Uppal from 1221 Bidwell St. security video footage 170 Undercover scenario #2 at YVR initiated on Amandeep Kang 171-175 Surveillance on Randhawa and Pereira on June 19 and Szucs's arrest 176-178 Surveillance on Randeep Kang and Amandeep Kang 179 Fairmont Pacific Rim and 1001 Homer St. security video footage review for June 19 180 Surveillance on Jasondeep Uppal and Braich 181 Kyle Latimer's residence Confirmation of Records, Justification, Etc. 182-184 Confirmation of records requested pursuant to production order (FRCC records at para. 184) 185-188 Justification of request for a vehicle tracker on Jasondeep Uppal's vehicle 189-194 Justification of request for production orders for security video footage for 1221 Bidwell St. and 1010 - 5233 Gilbert Rd. 195-197 Justification of request for production order for phone calls and call detail records from FRCC 198-199

Conclusion

200-205 Request for a sealing order

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- [1] Authorities relied on: Criminal Code (Re), [1997] O.J. No. 4393 (S.C.J.); R. v. Sunner, 2017 BCSC 2445 at para. 31; R. v. Belanic, 2019 BCSC 1411 at para. 14; R. v. Bui, 2005 BCPC 210 at paras. 57-60; R. v. Lal, (1990) 113 B.C.A.C. 47 at paras. 20-22; R. v. Morelli, 2010 SCC 8 at paras. 58, 69-73; R. v. Vaz, 2015 BCSC 728 at paras. 14-15.
- [2] No cases cited for this point.
- [3] No cases cited for this point.
- [4] No cases cited for this point.
- [5] Authorities relied on: R. v. Debot, 30 C.C.C. (3d) 207 (Ont. C.A.) at para. 9, aff'd [1989] 2 S.C.R. 1140; R. v. Garofoli, [1990] 2 S.C.R. 1421 at 1456-1457; R. v. Rocha, 2012 ONCA 707 at para. 26; R. v. Liu, 2011 BCSC 1266 at paras. 69-75; R. v. Chioros, 2019 ONCA 388 at paras. 18-20; R. v. Herta, 2018 ONCA 927 at paras. 29-34.
- [6] Authorities relied on: R. v. Chehil, 2013 SCC 49 at para. 46; R. v. Lui, 2014 BCCA 166 at paras. 28, 41-46; Morelli at paras. 63-68, 75-79, 95.
- [7] See Appendix A - "Architecture of the July 7, 2017 ITO for Production Orders" for a more detailed breakdown of the general structure of the ITO in issue on this application.
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