

CANADA / JUDGMENT

R. v. Lee

2002 BCSC 1931

COURT

Supreme Court of British Columbia

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2002 BCSC 1931 R. v. Lee

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R. v. Lee

Date:

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Docket:

CC010051

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Ruling on Authorization P37/2000

The Honourable Mr. Justice Cullen

October 31, 2002

HER MAJESTY THE QUEEN

AGAINST

SEE CHUN LEE, CHUK FONG TAO, WEI BO CHEN

CHAK NAM CHAN, SIU WAH CHAU AND CHEUNG HUNG

Counsel for Crown

M.M.M. Devlin

J.K. Torrance

Counsel for Defendant Lee

P. Leask, Q.C.

D. Jevning

Counsel for Defendant Tao

D.B.L. Sokol

Counsel for Defendant Chen

D. Gaffar

No other appearances

Place and Date of Trial:

Vancouver, B.C.

October 31, 2002

BAN ON PUBLICATION 648 CCC

- [1] THE COURT: Authorization P37/2000 was issued on May 19th, 2000, to be effective from May 20th, 2000, up to and including July 18th, 2000.
- [2] Although the main focus of the affidavit in support of P37 is directed at establishing a basis for the interception of private communications for offences under the Immigration Act relating to smuggling migrants from China into Canada, it also addressed offences under the Controlled Drugs and Substances Act and the Criminal Code relating to the importation, trafficking, possession for the purposes of trafficking, possession of proceeds of crime, laundering proceeds of crime, and conspiracy to commit those offences.
- [3] By contrast, the exclusive focus of the challenge to the validity of P37 was on the drug-related offences in connection with which the interception of Ho, Gou Din's private communications were sought.
- [4] The sole issue before me is whether Ho was properly named in P37 on the basis that the affidavit, as edited, established a credible probability permitting the authorizing judge to conclude that the interception of his private communications, as a primary target, would provide evidence relating to one or more of the drug-related offences within the scope of the affidavit.
- [5] Ho, of course, is no longer an accused on the indictment before the court. The three remaining accused, Lee, Tao, and Chen, have standing to attack the validity of the authorization relating to Ho because, in the case of Tao and Chen, their private communications with Ho are captured under P37, and, in the case of Lee, he is named as a secondary target in P37 on the strength of his relationship to Ho.

- [6] The fulcrum of the P37 affidavit, as it relates to the validity of the interception of Ho's private communications, encompasses 10 paragraphs, including paragraphs 348, 352, 353, 354, 356, 357, 358, 360, 361, and 364.
- [7] The Crown's position, in seeking to uphold the validity of the authorization relating to Ho, is that those paragraphs, when read in the context of the balance of the affidavit insofar as it provides evidence of Ho's drug importing and trafficking activities, practises, relationships and movements, establishes the credibly based probability required to justify the interceptions sought.
- [8] The contextual information relied on by the Crown in affidavit P37 is, for the most part, but with some exceptions, the same as the information contained in the affidavit sworn in support of the preceding authorization, P21/2000 as it relates to Ho, and which I upheld in a ruling issued October 23rd, 2002. That information is set out in paragraphs 28 to 38, 40, and 47 to 49 of my reasons of October 23rd, 2002, which are reproduced below, subject to editing portions of those paragraphs out that are not referred to in the P37 affidavit.
- [28] The information provided by informant A in May, June and July of 1999 consisted of information that Ho and Lee were involved together within a group involved in heroin trafficking and that Lee was a higher level person than Ho and had a contact in China with "Ng Yat" who was able to export heroin from Southeast Asia to Canada and other places. In addition, according to informant A, Lee, along with Ho and others had a share in a disco club which "was expected to be good for laundering money and would be used to meet to discuss criminal activities."
- [29] Informant B's information on December 29, 1999 tended to confirm the existence of Ho's ownership and involvement in the disco club referred to as the Viva Club at which the people operating it were selling "every kind of drug" including ecstasy.
- [30] On December 31, 1999 informant E provided information that Ho and Lee were dealing different kinds of drugs including heroin and that they were involved with the importation of heroin and "other kinds of drugs from China". Informant E also indicated that Ho was in China and was organizing a heroin shipment for Canada. On January 2nd informant E described Ho as an active drug dealer who had a boss referred to as Au Chun (Lee) and that they were major heroin importers who had an established importing network that was very safe and that they had local people responsible for off-loading the shipments and distributing the heroin for them as they would never touch the heroin themselves. Informant E also noted that Ho's and Lee's shipments rarely came through China because of the severe penalties there and that they also imported heroin into Australia because of the profit.
- [31] The informant also gave information about Lee receiving a shipment of heroin about three months previously and having to send money back to the heroin supplier in Hong Kong after the heroin shipment had arrived successfully. He also said that Ho and Lee were involved in money laundering activities and that ecstasy pills belonging to Lee were being sold at his

club referred to as Via Las Vegas Cabaret. Informant F's information provided on January 5th was to the effect that Lee and one other person were in control of the heroin available in Vancouver as of three weeks previously and that Lee was presently a heroin importer.

- [32] The information provided by informant E on January 7 included his belief that Ho's heroin was packaged in a special way to avoid detection by drug dogs and that heroin importers used known Chinese businesses as a shield to bring in heroin shipments and that Ho had connections with customs officials in China. The informant also referred to Ho's involvement with a boat of illegal immigrants and indicated that his belief that some of the heroin brought in by Ho came with the illegal immigrants who arrived the previous summer.
- [33] On January 13 informant E noted that Ho and Lee were constantly looking out for police surveillance and that they remembered licence plates of police vehicles and passed that information to people who were concerned. -- Informant E also indicated that "Sai, Gua Lo and Au Chun were involved together in an ongoing criminal enterprise and that they were continuously importing heroin into Canada" and that he also believed that Ho was involved with ecstasy in Canada. On January 18, 2000 informant E indicated that Ho and Lee were users of ecstasy pills and that heroin importers including Ho would bring in a smaller shipment as a test to a new system and once it had proven reliable the importers would bring a major load to generate more profits.
- [34] On January 22nd he provided information that Lee was presently in Hong Kong or China. On January 26th informant E indicated that Lee had returned to Canada on January 23, 2000. He also indicated that Ho presently believed that heroin dealing was less profitable than other criminal matters. In February of 2000 he provided information that Ho might remain in Asia for a long time because he felt uncomfortable in Canada as the police paid too much attention to him.
- [35] On February 19, 2000 informant B provided information which included an assertion that "all kinds of drugs including heroin, cocaine, ecstasy and marijuana were being sold at the Viva Las Vegas Club". On February 23, 2000 informant E reiterated his previous information as to the likelihood that Ho would remain in Asia for a long time.
- [36] On February 24, 2000 informant A provided information that Ho was looking for a person or persons interested in distributing ecstasy in Vancouver.
- [37] On March 13, 2000 informant E provided information reiterating the likelihood that Ho would not return to Vancouver and that he "might not be presently involved in the importation of heroin to Canada because the profit was too low in Canada, he was involved in other criminal activities, and he felt there was too much police surveillance on him in Vancouver.
- [38] The second area of evidence produced in the affidavit said to support the authorization is the interception of private communications of Lee, Ho and others said to establish the past, ongoing and prospective nature of the activities involving Ho, Lee and others.

...

[40] Paragraphs [(157-161, 163-164, 180, 187,190, 191, 217 and 251 of P37 affidavit)] provide confirmation of Ho's ongoing relationship with Lee between August of 1999 and January 1st of 2000 said to offer confirmation of the informant's characterization of the illicit nature of their relationship because of the guarded nature of their conversations and their ongoing concern with police surveillance.

...

[47] On January 1, 2000 Lee and Ho were in touch while Lee was still in Vancouver and Ho in Hong Kong. They discussed business, specifically a plan to deal in counterfeit coins and they agreed that they would meet when Lee came to Hong Kong with Ho confirming it was "very important" that they do so.

[48] On January 5, 2000 some four days later Ho had a conversation with Li, Peter Sum which was intercepted. Ho told Li that he had something to talk to him about and wanted to meet with him directly when he came over to Hong Kong later.

[49] Surveillance evidence established that between January 4th and January 11, 2000 Lee was over in Hong Kong and during that time he and Ho were together with others and went to Macau on January 8th and 9th, 2000.

[9] Further information encompassed in P37 and P21, but not referred to in my summary above, included the contents of paragraph 176(a), (b) and (d), and portions of paragraph 183, which I set out below.

[10] 176 reads:

On February 29th, 2000, I was advised by Constable Kwok and verily believe that he received the following information from Informant A on July 24th, 1999, which both Constable Kwok and I consider to be reliable and verily believe to be true that:

- (a) Recently Sai Gua Lo (Ho), Sor Jai Hay (Chu Pei Hay) (phonetic), Dai Tau Fut (Hui Chi Keung), and an unknown male were seen together at [edited] Restaurant in Richmond.
- (b) On another occasion, Ho, Hui, Chu, and Hui's friend, Mah, Wayne Shi Wah (phonetic) were all together at the Number Nine Restaurant in Richmond at five o'clock in the morning; and
- (d) Sai Gua Lo (Ho) has been with Sor Jai Hay (Chu Pei Hay) in Vancouver lately, and was also very closely associated with Dai Tau Fut (Hui Chi Keung) lately.

[11] The significant portion of paragraph reads 183 reads as follows:

I have read a surveillance report dated August 16th, 1999, and, based on my reading, I believe the following is an accurate account of the following observations made on that date.

- (a) At 1710 hours, Ho and Chu Pei Hay were sitting at a table in the food court area of the Richmond Public Market at 1880, 8260 Westminster Highway, Richmond;
 - (b) At 1714 hours, Chu Pei Hay left alone in the white Venture GXM789 from the parking lot of the Richmond Public Market.
- [12] My finding of sufficiency in relation to P21 was based, to a significant extent, on evidence present in P21, but not present in P37 relating to the development of a plan involving Lee, Ho, and the person named Li, Peter Sum to transport ecstasy from China into Canada using Li's import/export company. I concluded that evidence, when placed in the context of all the other relevant evidence, could permit the authorizing judge to conclude, to the required degree, that the interception sought would afford evidence of the offences under investigation.
- [13] It is evident that in P37 the development of a plan involving the importation and distribution of ecstasy by Lee, Ho, and Li, Peter Sum is no longer relied on as the basis for the authorization sought against Ho. Rather, it is Ho's conduct in returning to Canada in early May of 2000, involving his contacting and meeting with Lee, the resumption of his contact or involvement with Chu Pei Hay (who was referred to in paragraphs 176 and 183 of the P37 affidavit set out above) said to relate to drug trafficking, (as evidenced by informant information, surveillance, and intercepted private communications) and, additionally, activities said to constitute drug trafficking evidenced by the interception of his private communications.
- [14] The immediate circumstances comprising the basis for the authorization sought were set out in the 10 paragraphs which I earlier referred to as the fulcrum of the P37 affidavit in relation to Ho. Those paragraphs are reproduced below.

348 At 1608 hours on May 3, 2000, pursuant to Authorization P.21/2000 an incoming telephone conversation was intercepted to LE, See Chun at telephone number 722-0011 from HO at an unknown telephone number and was recorded. The telephone conversation was spoken in the Cantonese language and was translated by Angela TSANG. LEE, See Chun gave 2 numbers, 6713687 and 2702557. HO said to talk when they met.

...

352. I have read a surveillance report dated May 5, 2000, and based on my reading I believe the following is an accurate account of the following observations made on that date:
- a. At 1235 hours, HO and an unidentified person left from the carport of the apartment building at 6471 Cooney Road, Richmond, in the white Vitara, BWA768;
 - b. At 2046 hours, the white Infiniti, HLL800, was parked, unoccupied, directly in front of the Sun Tung Kee Hot Pot Restaurant at 1060- 8580 Alexandra Road, Richmond, LEE, See Chun and his son were walking into the restaurant;

- c. At 2049 hours, the white Grand Cherokee, CTD869, arrived at 8580 Alexandra Road, Richmond FONG, Danny Sai Gik was driving and an unknown Oriental female was in the passenger seat. The vehicle parked in the upper level parking lot;
 - d. At 2223 hours, LEE, See Chun and his son got in the white Infiniti, HLL800, and left from 8580 Alexander Road, Richmond;
 - e. At 2225 hours, Carmen CHAN left alone in the grey Mercedes, EVM798, from 8580 Alexander Road, Richmond;
 - f. At 2227 hours, FONG, Danny Sai Gik and the unknown female left from 8580 Alexander Road, Richmond, in the white Grand Cherokee, CTD869;
 - g. At 2300 hours, the white Vitara, BWA768, was parked unoccupied in the parking lot at Knight and Day Restaurant, 5075 Kingsway, Burnaby. The white Infiniti, HLL800, was parked unoccupied on Kingsway at the front entrance of the restaurant;
 - h. At 2356 hours, LEE, See Chun and HO were at the front entrance of the Knight and Day Restaurant. LEE, See Chun left by himself in the white Infiniti, HLL800 and HO went back into the restaurant.
353. I have read a surveillance report dated May 6, 2000, and based on my reading I believe the following is an accurate account of the following observations made on that date:
- a. At 0011 hours, HO was sitting at a table with CHU, Pui Hei in the Knight and Day Restaurant at 5075 Kingsway, Burnaby;
 - b. At 0015 hours, the white Civic, VHV281, was parked unoccupied next to the white Vitara, BWA768, in the parking lot of the Knight and Day Restaurant at 5075 Kingsway, Burnaby;
 - c. At 0930 hours, the black Integra, ESK783, was parked in front of HUI's residence at 2-8491 Jones Road, Richmond.
354. On May 16, 2000, I was advised by Constable Kwok and verily believe that the received the following information from Informant "E" on May -- 2000 which both Constable KWOK and I consider to be reliable and verily believe it to be true that:
- a. "Sai Gua LO" (HO) had returned to Canada and was presently in Vancouver;
 - b. "Sai Gua LO"(HO) and -- (CHU, Pui Hei) were seen together within the last few days;
 - c. -----
 - d. -----
 - e. The Informant believed that "Sai Gua Lo" (HO) wanted to work in the United States due to -- (CHU, Pui Hei's) connection in Los Angeles;

- f. The informant felt that "Sai Gua Lo" (HO) was unlikely to stay long in Vancouver as he was too well known by the police;
 - g. "Sai Gua Lo" (HO) might spend most of his time in Toronto -- in the near future.
 - h. -- (CHU, Pui Hei) was still involved in marihuana and cocaine;
 - i. -----
 - j. -- presently (CHU, Pui Hei) had supplied of marihuana in Canada and cocaine in the United States;
 - k. -- (CHU, Pui HJei) was looking for people to facilitate the shipments of these drugs across the border.
356. At 2303 hours on May 9, 2002, pursuant to Authorization P.21/2000 an outgoing telephone conversation was intercepted from "Wah Wah" at telephone number 270-2557 to HO at telephone number 808-3485 and was recorded. The telephone conversation was spoken in the Cantonese language and was translated by Albert LI. "Wah Wah" said "Ah Fei Mui Jai (Fat Lady) was looking for HO and asked if she could give HO's phone number to "her". HO said yes, no problem. "Wah Wah" talked to the other party saying "hello, yes, 3485." HO said to tell "her" that he would call "her".

("Wah Wah" called HO from her residential phone to the cellular phone that HO uses to while in Vancouver and Toronto)

HO uses cellular phone

357 At 1655 hours on May 10, 2000, pursuant to Authorization P.21/2000 an incoming telephone conversation was intercepted to HO at telephone number 808-3485 from an unknown female at an unknown telephone number and was recorded. The telephone conversation was spoken in the Cantonese language and was translated by Genevieve MA. HO said he was having coffee with someone at the coffee place. The female asked if it was convenient for HO. HO told the female to go to Neptune Seafood Restaurant and he would walk over there to get it. HO asked if the female intended to give it to that person. The female said yes. HO said to come and give it to him.

(I believe that this is a suspicious call that may be drug related)

358. At 1702 hours on May 10, 2000, pursuant to Authorization P.21/2000 an outgoing telephone call was intercepted from HO at telephone number 808-3485 to an answering machine at an unknown telephone number and was recorded. The telephone call was spoken in the Cantonese language and was translated by Genevieve MA. HO left a message saying "Give me a call, this is "Lo Sai", 604-808-3485.

...

360. At 2228 hours on May 10, 2000, pursuant to Authorization P.21/2000 an incoming telephone conversation was intercepted to HO at telephone number 808-3485 from an unknown male at an unknown telephone number and was recorded. The telephone conversation was spoken in the Cantonese language and was translated by Genevieve MA. The male asked HO to get a cellular phone for him (the male). HO said okay. The male asked how much it was. HO said it as about \$100 to \$120. HO asked if the other thing was not ready. The male said it was not back yet, there would be a phone call when it was back. The male said the fat fucker had gone back up there. HO asked "up there to our place?" The male said yes. HO asked for "his" (fat fucker's) phone number. The male said he did not have it. HO said to be firm about that, he heard from "Lai See" (CHIK, Wai Man) just now that that fucker wanted a big portion. The male asked why the fuck HO promised "him". HO said he did not promise "him"...he told "him" he (HO) would ask about it and if they (HO and HUI, Chi Keung) thought it was okay, they (HO and HUI, Chi Keung) would do it. The male said to talk it over as soon as possible. HO said okay.

(I believe that this is a suspicious call that is drug related, I further believe that HO and the unknown male are discussing matters concerning the exchange for Canadian marijuana for Cocaine in the United States).

361. At 1440 hours on May 11, 1999, pursuant to Authorization P.5/99 an outgoing telephone conversation was intercepted from HO at telephone number 808-3485 to CHU, Pui Hei at an unknown telephone number and was recorded. The telephone conversation was spoken in the Cantonese language and was translated by George HO. HO asked why he had not see CHU, Pui Hei yet. CHU, Pui Hei said he would arrive soon. HO said it was almost time. CHU, Pui Hei said he knew.

...

364. I have read a surveillance report dated May 12, 2000, and based on my reading I believe the following is an accurate account of the following observations made on that date:

- a. At 1530 hours, HO and LIANG, Qi Ting were walking towards Scarborough Towne Centre 300 Borough Drive, Scarborough, after leaving the court house at 200 Towne Centre Court, Scarborough;
- b. AT 1535 hours, HO and LIANG, Qi Ting got into the blue Toyota, ABJB008, and left the area;
- c. At 1619 hours, after going to a plaza on Finch Avenue, HO dropped off LIANG, Qi Ting at the front entrance of the apartment building at 55 Bamburgh Circle, Scarborough, in the blue Toyota, ABJB008, and drove;
- d. At 1627 hours, HO went into the Celestial Court Chinese Food Restaurant at 4394 Steeles Avenue East, Markham;
- e. At 1895 hours, Ho came out of the Celestial Court Chinese Food Restaurant and returned to the blue Toyota, ABJB008 and drove away;

f. At 1902 hours, HO arrived at 55 Bamburgh Circle, Scarborough in the blue Toyota, ABJB008, and drove through the securitygate into the complex.

[15] Any analysis of the sufficiency of the circumstances said to justify P37 requires consideration of Ho's past activities, relationships, practises, and movements set forth in the P37 affidavit, and, in particular, the extent to which they add meaning to the critical contemporary evidence.

[16] Equally, it is important to consider the reliability of any informant information relied on in support of P37 using the considerations set out in *R. v. Garofoli* (1990), 60 C.C.C. (3d) 161 at page 191 as follows:

... I conclude that the following propositions can be regarded as having been accepted by this court in *Debot and Greffe*:

(i) Hearsay statements of an informant can provide reasonable and probable grounds to justify a search. However, evidence of a tip from an informer, by itself, is insufficient to establish reasonable and probable grounds.

(ii) The reliability of the tip is to be assessed by recourse to "the totality of the circumstances." There is no formulaic test as to what this entails. Rather, the court must look to a variety of factors including:

(a) the degree of the detail of the "tip";

(b) the informer's source of knowledge;

(c) indicia of the informer's reliability such as past performance or confirmation from other investigative sources.

(iii) The results of the search cannot, *ex post facto*, provide evidence of reliability of the information.

[17] In connection with that test, I ruled in *R. v. Lee et al* 2002 BCSC 260 at paragraph 12 as follows.

In my view, the paramount concern of the court in *Garofoli* lies not with the creation of a distinct algorithm for the assessment of the reliability of an informant's tip, but rather with ensuring within the overall authorization process a meaningful analysis of such information in determining whether the totality of the circumstances justifies the order sought. The propositions accepted by the court in *Garofoli* emphasize that the analysis is not "formulaic" and involves "recourse to the totality of the circumstances". It seems to me that connotes an open and flexible analysis conducive to the permutations that different cases bring, rather than a closed and rigid one unyielding to variations in the mix of evidence, its nature, quantity and quality.

[18] Here, the crucial informant information is that of Informant E set forth in paragraph 354. In my opinion, the informant information in paragraph 354, for the most part, meets the standard of reliability required by *Garofoli*, *supra*. There is clear confirmation of some of the

information provided, namely Ho's return to Vancouver, Ho's meeting with Chu, and the likelihood of Ho returning to Toronto. The information has some detail; Chu's connection with Los Angeles, Chu's involvement with marihuana and cocaine in the U.S. and Canada, and Chu's interest in getting people to facilitate shipments of those drugs across the border.

- [19] I agree with counsel for the accused that E's evidence regarding Ho's desire to work in the U.S., given Chu's connections there, is couched in a way that makes it somewhat speculative, and I will not rely on that. Some evidence of E's past performance is set out in paragraph 78, and the detailed nature of his earlier information is set out in paragraphs 250, 252, 257, 259, 262, 266, and 297.
- [20] There is also confirmation of some of the details which he provided, for example, Ho's concern with surveillance, which he identified in a number of occasions is confirmed in paragraphs 141, 164, 179, 185, 190, and 217, and, as well, a congruence can be found between E's information and that provided by other informants referred to in the affidavit in support of P37 relating, for example, to Ho's involvement in the Viva Club, the selling of drugs there, and the nature of Ho's relationship to Lee (see paragraphs 140, 176, 184 and 249).
- [21] Thus, in my view, the authorizing judge could have found Informant E's information reliable on the basis of the considerations set forth in Garofoli. In my view, the quest for reliability does not require that every element of an informant's information be confirmed by other means, particularly where the informant information is not a single bald tip, but is detailed as part of an ongoing narrative of events. The accuracy of the overall narrative can be confirmed by its logical agreement with other information, and by confirmation of specific random elements.
- [22] That being so, it falls to consider whether the information/evidence advanced provides justification for a credibly-based probability that the authorization sought would provide evidence of the specified crime as sufficient to permit the conclusion that the authorizing judge could have granted the authorization. In making that determination, I do not rely on the affiant's opinion of the meaning of the intercepted communication between Ho and the unknown male in paragraph 260. While there may have been information in the unedited version of the P37 affidavit that objectively justified that opinion, there is not in the edited version before me.
- [23] Secondly, I do not rely on or have regard for paragraph 361 of the P37 affidavit. I am simply unable to conclude, with the required degree of certainty, whether that intercepted communication relates to May 11th, 1999, May 11th, 2000, or some other date altogether. The confluence of the "wrong" date with the "wrong" authorization number takes it beyond an error that can simply be rectified by an assumption.
- [24] Thus, the immediate factual context that remains is essentially this: When Ho returned to Canada from China, he went to Vancouver where, in the past, he had significant business dealings. He contacted Lee, with whom he had a past relationship said to involve importing

and trafficking various kinds of drugs. Lee gave him two telephone numbers or pager numbers, and Ho said they'd talk when they met. They met two days later at a Knight and Day Restaurant in Burnaby at around 11:00 p.m. and were together for approximately one hour.

- [25] At the same time, or shortly thereafter, Ho also met with Chu Pei Hay at the same restaurant. Chu Pei Hay is said, by Informant E, to be involved in marihuana and cocaine, with supplies of marihuana in Canada and cocaine in the United States, and was looking for people to facilitate the shipment of those drugs across the border.
- [26] Some five days later, on May 10th, 2000, Ho is intercepted talking to two different people, on both occasions in a cryptic and guarded fashion. In the first call from an unknown female, Ho tells her to go to a restaurant and he will walk over and "get it." He asked if she intended to "give it" to "that person" and when she said yes, he said to come and give it to him.
- [27] In the second call on May 10th at 10:28 p.m. Ho speaks with an unknown male who asks him to get a cell phone for him. Ho agrees. There follows thereafter a highly cryptic discussion about if "that other thing was ready," about somebody who went "back up there," about that person wanting a "big portion," about whether or not Ho "promised him," and about Ho and someone else deciding "whether to do it," and the unknown male telling Ho to talk it over "as soon as possible."
- [28] Two days later, Ho was seen back in Toronto.
- [29] It is essentially that evidence, in conjunction with the evidence of Ho's past activities, relationships, practises, and movements supportive of his long-term involvement in drug offences that forms the basis for the impugned authorization.
- [30] In submissions, counsel argued that, while the two intercepted conversations could be construed as consistent with communications of a type related to drug trafficking, they were also consistent with collecting gambling debts or loan sharking. The only reference in the P37 affidavit I could find relating to Ho's involvement with either loan sharking or gambling was in paragraph 252, sub-paragraph pp, containing information from Informant E on January 2nd, 2000 that:

Ho had a brother in Vancouver who was involved in the loan sharking business at the casinos for Ho.

- [31] In my view, it is necessary to view the evidence said to support a credibly based probability in its totality. It is obvious that a circumstance viewed in isolation may provide less insight into its meaning than it does when viewed in its logical and temporal context.

- [32] In the case of P37, the first salient circumstance is that Ho chose to go to Vancouver when he returned from his lengthy sojourn in China. The evidence in P37 tends to support the conclusion that Ho's predominant drug-related activities were based in Vancouver. The authorizing judge could be satisfied, to the required degree, that the infrastructure of Ho's past drug importation and distribution endeavours was Vancouver based.
- [33] The second salient circumstance is that, on his return to Vancouver, Ho contacted Lee, who, the authorizing judge could be satisfied to the required degree, had a relationship with Ho which featured prominently the importation and distribution of drugs in the Vancouver area.
- [34] The third salient circumstance was that Ho received two telephone or pager numbers from Lee. While there is no evidence who those numbers relate to, it is indicative of Ho's desire to contact somebody known to Lee.
- [35] The fourth salient circumstance was that Ho arranged to meet with Lee so they could talk. There was no discussion over the phone as to what Ho wished to talk to Lee about.
- [36] The fifth salient circumstance is that Ho and Lee did meet at a restaurant in Burnaby for a period of approximately an hour two days later in circumstances not susceptible to electronic surveillance.
- [37] The sixth salient circumstance is that, either at the same time as his meeting with Lee or shortly thereafter, Ho also met with Chu Pei Hay at the same restaurant.
- [38] The seventh salient circumstance is the information from Informant E as to Chu's contemporary involvement with cocaine in the U.S. and marihuana in Canada, and his desire to get people to facilitate shipments of the drugs across the border.
- [39] The eighth salient circumstance is Ho's guarded and cryptic telephone conversation with a female several days later instructing her to give him something referred to only as "it."
- [40] The ninth salient circumstance is a second telephone conversation between Ho and an unknown male, also guarded and cryptic, in which he agreed to get a cell phone for the male, presumably to facilitate future surreptitious telephone calls, and they discuss something impending, which Ho had to discuss with another person, and which involved another person wanting "a big portion."
- [41] The tenth salient circumstance is that two days later Ho was back in Toronto.
- [42] While looked at individually and without reference to the context of Ho's past drug activities, relationships, practises, and movements each of these circumstances might be dismissed as too vague or enigmatic to transcend the realm of speculative possibility. But when viewed in combination and in context, in my view, a pattern of conduct emerges upon which the authorizing judge could find the requisite grounds to issue the authorization.

- [43] Ho's visit to Vancouver could be construed as purposeful. His meeting with Lee, with whom he had a longstanding drug-trafficking-based relationship, and with Chu, who was actively involved in the marihuana and cocaine trade, was - a belief could be sustained - a part of that purpose. His two guarded telephone calls, whether part of his overall purpose or incidental to his overall purpose, nevertheless furnish evidence that he was actively involved in conduct resonant with trafficking-type activity.
- [44] While I am alive to counsel's submissions that the telephone conversations were consistent with collecting gambling debts or loan sharking, it seems to me that there is much less of an evidentiary basis to believe that, and the calls, particularly the second one, do not provide much support for such a belief.
- [45] While there is not a parade of evidence to support the belief that Ho's drug trafficking activity was ongoing and would continue into the future, that is, at least in part, a function of the fact that his return to Canada occurred relatively late in the course of the authorization.
- [46] What can be said is that the activity at issue occurred fairly immediately upon his return to Canada, and supports the belief that he was not in a hiatus of a sort which conditioned my rulings in earlier authorizations. While no specific transaction emerges from the evidence, it is clear from *R. v. Madrid*, [1994] 48 B.C.A.C. 271, evidence of a specific transaction is not required. It is sufficient if the authorizing judge could infer, to the required degree, that there was ongoing drug trafficking conduct likely to continue.
- [47] Given the nature and the immediacy of Ho's conduct on his return to Canada, in my view, that threshold is reached in the present case, and I find the authorization valid against Ho.
- [48] Given that finding, in my view, there is no reasonable basis for finding Lee was not properly named as a secondary target.

"Cullen, J."

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