

CANADA / JUDGMENT

R. v. Monteith

2023 BCSC 542

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2023 BCSC 542 R. v. Monteith

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Monteith,

2023 BCSC 542

Date: 20230406

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Registry: New Westminster

Rex

v.

Carlos Nathaniel Monteith

Corrected Judgment: This judgment has been redacted for publication purposes on March 20, 2025.

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment Re: Voir Dire 4 - Challenge to Three Judicial Authorizations

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Place and Dates of Hearing:

New Westminster, B.C.

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Place and Date of Judgment:

New Westminster, B.C.

April 6, 2023

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I. Introduction

- [1] The applicant, Carlos Nathaniel Monteith, challenges the facial and sub-facial validity of three judicial authorizations, pursuant to s. 8 of the Canadian Charter of Rights and Freedoms [Charter], and seeks exclusion of the evidence obtained through the use of the authorizations, under s. 24(2) of the Charter.
- [2] This ruling follows the rulings I made in respect of voir dires 2 and 3. Those rulings were the subject of reasons for judgment issued January 18, 2023, and indexed at 2023 BCSC 78 (the "prior reasons").
- [3] For purposes of these reasons, I adopt paras. 1-21 of the prior reasons.
- [4] As I explained in para. 4 of the prior reasons, the three judicial authorizations the applicant challenges are:
1. a search warrant obtained by the Integrated Homicide Investigation Team ("IHIT") to search room 304 at the Squamish Budget Inn, issued December 6, 2019 (the "Squamish search warrant");

2. a production order obtained by the New Westminster Police Department ("NWPD"), issued January 16, 2020 for "all audio recordings of completed institutional calls made by inmate Carlos Monteith between November 27, 2019 and January 15, 2020" from NFPC (the "NWPD production order"); and
3. a production order obtained by IHIT and issued January 22, 2020 for:
 - a) audio recordings of telephone calls made by the applicant from NFPC from December 30, 2019 through to January 22, 2020; and
 - b) documentation surrounding the above-noted telephone calls (the "NFPC production order").
- [5] In brief, in the prior reasons, I addressed (para. 15) the preliminary question as to whether the applicant had a reasonable expectation of privacy in the Call Detail Records ("CDRs") relied upon by the police in obtaining the production orders for audio recordings and related documentation for telephone calls made by Mr. Monteith while he was in custody at North Fraser Pretrial Centre ("NFPC").
- [6] I ruled (paras. 116, 217) that Mr. Monteith had a reasonable expectation of privacy with respect to the CDRs, which had been obtained without judicial authorization, and accordingly he had established a breach of section 8 of the Charter in relation to provision of the CDRs to the police.
- [7] The Information to Obtain ("ITO") in support of the Squamish search warrant (the "Squamish ITO") allowing the search of room 304 at the Squamish Budget Inn relied on a document referred to in the ITO as the "Blood Bath hit list" (the "List") found in Mr. Monteith's possession upon a lawful search of Mr. Monteith's belongings on August 16, 2019, when he was transferred from Kent Institution to Surrey Pretrial Services Centre ("SPSC"). I ruled that Mr. Monteith had no reasonable expectation of privacy in the List, and therefore he had not established a breach of s. 8 with respect to seizure of the List nor in provision of the List to IHIT: paras. 179, 217.
- [8] The rulings set out in the prior reasons have resulted in the need for excision of the information relating to the CDRs found in the ITO in support of the NWPD Production Order (the "NW ITO") affirmed by Cpl. Chong of the NWPD, and, similarly, the CDR references set out in the ITO in support of the NFPC production order (the "NFPC ITO") sworn by Constable Carey of IHIT on January 22, 2020. In addition, counsel have agreed on certain amplification amendments to the NFPC ITO and the Squamish ITO.

II. Background

- [9] The applicant contends that there were insufficient grounds for the search warrant and the production orders to have been issued, and therefore the evidence obtained as a result of these authorizations should be excluded under s. 24(2) of the Charter. The Crown's position is that the judicial authorizations were properly issued, there was no contravention of s. 8 of the Charter, and accordingly there is no need to consider exclusion of evidence under s. 24(2) of the Charter.

III. Legal principles

- [10] The statutory preconditions for the issuance of a search warrant are set out in s. 487(1) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Section 487(1)(b) is relevant to this application. The section is as follows:

487 (1) A justice who is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in a building, receptacle or place

- (b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, against this Act or any other Act of Parliament,

may at any time issue a warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant

- (d) to search the building, receptacle or place for any such thing and to seize it, and
- (e) subject to any other Act of Parliament, to, as soon as practicable, bring the thing seized before, or make a report in respect of it to, a justice in accordance with section 489.1.

- [11] Thus, the issuing justice must be satisfied that there are reasonable grounds to believe:

1. that there is in a building, receptacle or place (in this case, room 304 of the Budget Inn, Squamish);
2. anything that will afford evidence with respect to the commission of an offence.

- [12] The statutory preconditions for the issuance of a production order are set out in s. 487.014 of the Code. The relevant provisions are as follows:

487.014 (1) Subject to sections 487.015 to 487.018, on ex parte application made by a peace officer or public officer, a justice or judge may order a person to produce a document that is a copy of a document that is in their possession or control when they receive the order, or to prepare and produce a document containing data that is in their possession or control at that time.

Conditions for making order

(2) Before making the order, the justice or judge must be satisfied by information on oath in Form 5.004 that there are reasonable grounds to believe that

- (a) an offence has been or will be committed under this or any other Act of Parliament; and
- (b) the document or data is in the person's possession or control and will afford evidence respecting the commission of the offence.

[13] In summary, insofar as is relevant here, the issuing justice or judge must be satisfied that there are reasonable grounds to believe that:

1. An offence has been committed under the Criminal Code;
2. The document or data is in the person's possession or control; and
3. The document or data will afford evidence respecting the commission of the offence.

[14] Search warrants and production orders are presumed valid and properly issued: *R. v. Sadikov*, 2014 ONCA 72, at paras. 83-84; *R. v. Wilson*, 2011 BCCA 252, at para. 63. The onus is on the applicant to demonstrate that the ITO is insufficient: *R. v. Campbell*, 2011 SCC 32, at para. 14.

[15] The applicant and the Crown respondent both cite the summary of applicable legal principles set out in *R. v. Liu*, 2014 BCCA 166. There, Garson J.A. reviewed a number of authorities, and stated at para. 39:

[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. [Emphasis in original.]
- 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".

[16] The phrases "will afford evidence with respect to the commission of an offence" or "will afford evidence respecting the commission of the offence" are interpreted broadly, to include not only evidence of criminal activity that can be placed before a court, but also to

gather information to assist in the investigation of such activity: *R. v. Vu*, 2011 BCCA 536, at paras. 29-31, aff'd 2013 SCC 60; *R. v. Ferguson*, 2018 BCSC 490, at paras. 67-68; *R. v. Mawick*, 2021 ONCA 177, at paras. 39-40, citing *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, 1999 CanLII 680, at para. 15 [*CanadianOxy*]; *R. v. Hayer*, 2023 BCSC 302, at paras. 31-34. The ITO need only provide grounds for believing that the recordholder has documents or data "relevant or rationally connected to the incident under investigation, the parties involved, and their potential culpability": *Mawick*, at para. 40; *CanadianOxy*, at para. 15.

- [17] The focus on review is on the affiant's reasonable belief, not the ultimate truth of the assertions made: *R. v. Slemko*, 2020 BCCA 207, at para. 49; *World Bank Group v. Wallace*, 2016 SCC 15. As noted by Moldaver and Côté JJ. in *World Bank* at para. 122:

Testing the affidavit against the ultimate truth rather than the affiant's reasonable belief would turn a Garofoli hearing into a trial of every allegation in the affidavit, something this Court has long sought to prevent. [Citations omitted.]

- [18] In reviewing the authorizations, I must take into account that authorizing justices may draw reasonable inferences from the evidence in the ITO: *R. v. Vu*, 2013 SCC 60 at para. 16; *Ferguson*, at para. 66. It is not my role to prefer one inference over another; the inquiry begins and ends with an assessment of whether the amplified record contains reliable evidence that might reasonably be believed on the basis of which the warrant could have been issued: *Slemko*, para. 53, citing *Sadikov*, at para. 88.
- [19] An affiant it is not required to conduct their own investigation into the accuracy of the information, unless there are signs that other officers may be misleading them or omitting material information: *Slemko*, at para. 54, citing *World Bank*, at para. 123.

IV. Analysis

A. Squamish Search Warrant

- [20] The applicant concedes that the ITO set out reasonable grounds to believe that an offence had been committed - the homicide of Mr. Coric. He argues that the ITO does not set out a sufficient basis upon which the issuing justice could have concluded, based on a reasonable belief standard, that searching the motel room would afford evidence of the offence under investigation. In particular, the applicant argues there was insufficient evidence to link him to the homicide of Mr. Coric, and to support a conclusion that anything of evidentiary value would be located in the motel room.
- [21] I do not accept these submissions.
- [22] The ITO set out reasonable grounds to conclude that Mr. Monteith was a credible suspect, or, in other words, a basis to conclude that Mr. Monteith was involved in the commission of the offence.

- [23] The ITO set out evidence from witnesses at the scene that generally matched the description of Mr. Monteith. Mr. Monteith had shot DD (these are not the witness' actual initials) on November 17, 2019 in New Westminster. I adopt the Crown summary of the evidence set out in the ITO, with some editing, as follows:
23. There was evidence from witnesses from the scene of the murder which generally matched the description of the applicant, who also shot [DD]:
- i. Francis Kustner's first statement describes the shooter as a Black male about 6'2" and over 200 pounds who was wearing a mask and dressed in black clothing: ITO paras. 22(a)(b) and (d).
 - iii. Megan Lao in her first statement said that shooter was a male dressed in black who had his face covered: ITO para. 24(c). In her second statement she said he was dressed all in black with a ski mask and hood on, wearing a black hoody with the hood up and could have been black or Fijian. Also he was skinny and lanky: ITO para. 25(h).
 - v. The witness Sandra Alvarez saw a male crossing in front of her who she described as a dark-skinned black male who was young-looking and was wearing a head wrap, black overalls, long sleeve shirt and a pair of black boots: ITO para. 32(b), (c).
 - vi. The Crown acknowledges that Tona Tieu's description does not match the applicant as she believed the shooter was a white male wearing sunglasses and black zip-up hooded sweatshirt with the hood up and a light brown beard: ITO para. 30.
 - vii. [DD] was shot by Carlos Monteith on November 17, 2019 in New Westminster, B.C. In her first statement she described Carlos as 24 years old, dark skinned [male], 6'2", skinny with bleach blonde dreadlocks. He had been staying at her house for approximately two months. Also, that he was on probation in Squamish and rents a house in Squamish: ITO para. 75.
 - viii. In [DD's] second statement, she said that Carlos had been staying with her for approximately 2 months and she wanted him to leave as he was not paying rent. He had rented a place in Squamish. Carlos was a black male, 6'2", very thin build with blonde dreadlocks: ITO para. 78 (a)(b)(c)(i).
 - ix. KP described Carlos as a black male in his 20s who had stayed there for a few months and had showed up with [DD's] boyfriend who dropped him off as "supposedly" he needed to lay low as he had just done a big job that he got paid \$60,000 for: ITO para. 77(b)(c).
- [24] KP occupied the basement suite of the residence [Avenue], New Westminster) where Monteith shot DD on November 17, 2019.
- [25] Constable Carey noted in the ITO that Monteith's description given by DD matched that given by Megan Lao, and with Francis Kustner's height description.

- [26] By itself, the identification evidence is obviously weak, but it is some evidence pointing to Mr. Monteith. In my view it was open to the issuing justice to rely on it, and to accept the affiant's assertions in that respect.
- [27] The ITO stated that Monteith was released from custody at SPSC on September 4, 2019.
- [28] The ITO set out evidence supporting a conclusion that Mr. Monteith had recently been involved in a murder for hire, that is, a paid "hit" or assassination. DD stated that Monteith had recently gotten a teardrop tattoo under his eye and told her it was for "catching a body" and that he had killed someone. She added that he goes to probation in Squamish and that he rents a house in Squamish.
- [29] The ITO set out that KP was present on the day of the shooting of DD. She stated that the man responsible was Monteith. According to the ITO, she stated that Monteith had been there for "a few months" and that he showed up after being dropped off by DD's boyfriend, LW, "as he needed to lay low as he had just done a big job that he got paid \$60,000". On amplification, the parties agree that this evidence from KP should be modified to indicate that it was hearsay to her, so the ITO should read "he supposedly needed to lay low as he had just done a big job that he got paid \$60,000 for".
- [30] Constable Carey asserted in the ITO that, "I believe LW took Monteith in to lay low at around the same time when Kristijan Coric was shot and killed in Surrey."
- [31] Again, in my view it was open to the issuing justice to rely on the evidence that Monteith had been recently involved in a contract killing, even with the addition of the qualifying word "supposedly" to the evidence from KP.
- [32] The ITO set out that the List was found in Mr. Monteith's effects when he was transferred from Kent institution to SPSC on August 19, 2019, and that the List included 52 names, which appeared to be aliases, nicknames, and initials. One set of initials on the List was "K-C". The original of the List was placed back in Mr. Monteith's effects. SPSC did not have the original list.
- [33] In the search warrant justification, Constable Carey stated:
- I believe "K-C" stands for Kristijan Coric, and that he was the intended target of the Surrey homicide. This list was in Monteith's effects just weeks prior to the homicide on September 28, 2019. Monteith was released three weeks prior to the homicide.
- [34] Once again, standing alone, the reference to the initials "K-C" on the List would be weak evidence linking Monteith to the Coric killing. These would of course be common initials. However the circumstances added some weight to the affiant's assertion that the List referred to the victim, Kristijan Coric. The document was headed "hit list". It was found on a prison inmate. It fitted the theory that Monteith was the perpetrator in a contract killing, in the relevant time frame.

- [35] Examining the ITO as a whole, there was ample evidence to indicate that the homicide of Mr. Coric was a contract killing. This would have been a reasonable inference on the part of the issuing justice. The ITO set out that there was a tracking device under the G-Wagon in which Mr. Coric was shot. The Toyota Corolla appeared to be the getaway car. The Toyota was later found burned, on the same day of the homicide. Materials were found in the G-Wagon consistent with drug trafficking.
- [36] In summary, there was evidence that Mr. Monteith had recently been involved in a contract killing, and evidence linking him to the apparent contract killing of Coric, namely, the physical descriptions of the suspect shooter, and the initials "K-C" on the "Bloodbath hit list". In my view, there was sufficient reliable evidence that would allow the issuing justice to be satisfied that there were reasonable grounds to conclude that Mr. Monteith was involved in the Coric homicide. As the authorities make plain, it is not for me to come to my own conclusion on that question.
- [37] The ITO set out ample evidence connecting Mr. Monteith to room 304 of the Squamish Budget Inn. Mr. Monteith advised his Squamish probation officer on November 21, 2019 that he was residing there. A keychain that read number 304 was found on a search of the Deluxe Hotel on Kingsway Avenue in Vancouver on November 23, 2019, following Monteith's arrest there on the same day in relation to the shooting of DD.
- [38] The resident supervisor of the Squamish Budget Inn advised an investigator that the tenant staying in room 304 was Carlos Monteith and that no one else was staying in the room. The supervisor (Gamble) advised the investigator that he was in the process of evicting Mr. Monteith. On looking in the room on December 3, 2019, the supervisor noticed that all of his belongings were still in the room. A property manager for the hotel (Hill) advised that Monteith had been renting the room since October 10, 2019.
- [39] The applicant argues that the ITO did not set out evidence that the items sought were in the motel room. The affiant indicated that the police were looking for various items that they believed were connected to the offence: the original copy of the "Blood Bath hit list"; dark overalls; dark facemask or covering; dark gloves, and documents or receipts. The ITO set out that previous searches of DD's residence and the Deluxe Hotel had not turned up the evidence and the items that the police were looking for. In my view, a reasonable inference open to the issuing justice was that these items could be among Mr. Monteith's belongings. He had apparently occupied the Squamish Inn motel room for an extended period of time, since shortly after the Coric killing, and had left belongings there.
- [40] The applicant argues that there was no basis for the affiant's stated belief that Mr. Monteith would retain a copy of the List and items used in the murder of Mr. Coric. He argues that common sense dictates that someone involved in such an offence would be unlikely to retain the clothing worn when shooting someone, or the List. In my view, there would have been no reason for the issuing justice to make such an inference. Common sense would also dictate that a person would not bring a document headed "Blood Bath - Hit List" containing a

list of names and initials into a correctional facility, or for that matter to be involved in a contract killing, and then to brag about it to others. There is little reason to attribute ordinary common sense to the target of the investigation.

- [41] In reviewing the information in its totality, not on a piecemeal basis, and in a practical, non-technical and common sense way, I conclude that there was sufficient reliable evidence set out in the ITO to allow the justice to conclude that the search of the Squamish Inn would afford evidence with respect to the commission of the offence, and thus the search warrant for the Squamish Budget Inn was validly issued.

B. NWPDP Production Order

- [42] As previously noted, the NWPDP production order was issued on the basis of the NW ITO affirmed by Cpl. J. Chung of the New Westminster Police Department on January 16, 2020. It authorized production of audio recordings of completed institutional calls made by the applicant from NFPC for the period between November 27, 2019 and January 15, 2020.

- [43] The NWPDP production order was issued in relation to four offences, three of which were directly connected to the shooting of DD at her residence at [Avenue] in New Westminster on November 17, 2019, by Monteith. These offences were:

1. Attempted murder;
2. Discharging a firearm with intent;
3. Possession of prohibited or restricted firearm with ammunition.

- [44] The fourth offence listed was possession of a weapon contrary to an order, on November 23, 2019, at Vancouver. This referred to finding a loaded 9 mm handgun in a leather bag near Mr. Monteith when he was arrested at the Deluxe Hotel in Vancouver on November 23, 2019.

- [45] The ITO is lengthy and detailed. It was sworn in support of a search warrant to seize and forensically examine a cellular phone, as well as three production orders. Two of the production orders sought and obtained related to call records for certain cell phones. The third production order is in issue on this application.

- [46] After excision of a reference to the CDRs from NFPC, Cpl. Chung's stated reasonable grounds for belief that the audio recordings would afford evidence of the offences was as follows:

134. I believe on reasonable grounds that these audio-recordings will afford evidence of the named offence. I base my belief on the following:
- e. On December 5, 2019, [SE] advised that she was at [DD's] house when a suspicious male she believed was MONTEITH's brother showed up;

- f. [SE] believed that this male was there to "finish the job" [I believe when [SE] says "finish the job" she is referring to locating and killing [DD] as she was still alive after the original shooting];
 - g. [Excised];
 - h. I believe a copy of the audio-recordings of these phone calls may show if MONTEITH has been directing people to look for [DD] while he is in custody; and
 - i. If MONTEITH has been directing people to look for [DD] this is a risk to [DD] that must be addressed to ensure her safety, and it may constitute additional offence(s) for MONTEITH that are related to the Named Offences.
135. On January 16, 2020, I spoke with Assistant Deputy Warden Andria CABLE (CABLE) at North Fraser Pre-Trial Centre who confirmed that MONTEITH has been in their custody starting November 25, 2019, with the first recorded call on November 27, 2019, and still currently resides there and is actively making phone calls; and
136. Given the risk to [DD] if MONTEITH has been, or is, directing people to look for her that must be addressed to ensure her safety, I am requesting phone recordings starting on November 27, 2019, which is the first recorded call on file, to January 15, 2020, which is the last full day before the date of this warrant application.
- [47] As I infer that the reference to the "first recorded call on November 27, 2019" in paragraph 135 could be based on information obtained from the CDRs, I will disregard that reference for purposes of this decision.
- [48] The affiant's stated grounds focused upon the concern that Monteith could be directing people from the institution to look for DD who could cause harm to her.
- [49] DD was the victim of the attempted murder, and was obviously a key Crown witness in relation to the offences directly connected to her shooting by Monteith.
- [50] The applicant does not dispute that there was a sufficient evidentiary basis to connect Mr. Monteith to the alleged offences, or that NFPC would have the data in its possession or control.
- [51] The applicant's submissions focus upon alleged weaknesses in the evidence set out in the ITO coming from the witness SE. The affiant also argues that SE's belief that the male she observed at the residence on December 5, 2019 was there "to finish the job" was no more than wild speculation on her part, and could not support issuance of the production order.
- [52] In isolation, the evidence of SE about her observations on December 5, 2019 would indeed be weak support for issuance of the production order. Her evidence (paragraph 109 of the ITO), as relayed to the affiant, was that she had gone to the residence where the shooting had taken place on December 5, 2019. She observed blue van parked in the vicinity. A black male exited the vehicle and was walking toward the alley behind [Avenue], the site of the

shooting. She believed this black male was acting suspiciously, with something in his hand that he appeared to be trying to conceal. In talking to her friends, she believed this male was "Darren" who had been described as "Carlito's brother". (The ITO establishes that "Carlito" was a name associated to Mr. Monteith, whose given name is in fact Carlos.) SE added that she believed this individual was there to "finish the job". She was not certain about the identity of the person she saw, but stated that the description seemed to match this other male known by associates of DD.

- [53] The applicant argues that SE's account would be much more consistent with the presence of an unknown individual, who had nothing to do with the offences in question.
- [54] However, the ITO set out ample other evidence, beyond the reference to the statement of SE, from which the authorizing justice could reasonably have made inferences supporting issuance of the production order. The ITO must be reviewed in totality, in a common sense manner.
- [55] Some of the other relevant information set out in the ITO is as follows:
1. On the day of the shooting, November 17, 2019, SE, a friend of the victim, provided a statement saying, among other things, that DD told her a few days previously that her boyfriend Charles "had put a hit out on her";
 2. KP told police that "Carlito" supposedly needed to lie low as he had just done a big job that he got paid \$60,000 for. He had blown through this money and was now broke. He had a gun, which he had had for at least one to two weeks. He kept telling DD that she owed him money;
 3. Another friend of DD's, SL had recently been at DD's residence and there was a 24-year-old male there from Toronto. The male threatened to kill her, and moved out. He returned a week later and apologized. DD forgave him and let him return. DD was afraid of this individual. The person said his name is "Carlito" and his family name is "Montiith" (sic). This individual had been asking people for a firearm;
 4. In a statement from DD obtained at the hospital on November 18, 2019, she stated "Why did he shoot me, why did Carlos shoot me". She stated that Carlos was 24 years old, and from Ontario. He was selling drugs. She stated that she was scared he was going to come back and kill her;
 5. In another statement DD gave November 21, 2019, she stated that Monteith shot her in her bedroom. He left the house, returned, and shot at her again. Monteith "had bragged about having a lot of money and killing someone". She described him as a black male, 6'2" tall, very thin build, with blond dreadlocked hair, wearing designer shoes worth \$3,000, black jeans and a black sweatshirt;

6. Text messages obtained from DD's phone indicated that "Carlito" was upset and wanted money from DD. DD was upset because "Carlito" previously threatened to put a bullet in her head. DD and LW exchanged messages about Monteith being a want-to-be gangster;
 7. Monteith was at Kent Institution in Chilliwack until August 2019. On April 15, 2019, he was charged with threatening to kill multiple corrections officers and their families while he was in custody at Kent Institution;
 8. Information was obtained from Peel Regional Police (in the Greater Toronto Region, Ontario) that Monteith had a history of weapons' possession and drug trafficking. He was known as a "yes-man". Cpl. Chung explained that meant, in the criminal world, someone who will do whatever is asked of them without saying "no", and is a term commonly used for enforcers in criminal circles;
 9. Monteith had an Instagram profile, which included numerous posts and images relating to handguns and firearms, as well as references to "hitter for hire" and "hitter on payroll";
 10. Monteith had been convicted of a number of gun and drug offences in Brampton, Ontario a few years prior;
 11. Monteith was arrested on November 23, 2019 by NWPD. He was arrested at the Deluxe Hotel on Kingsway, in Vancouver. Upon his arrest a loaded 9 mm Sig Sauer handgun was located nearby, or on his person. The police also seized a box of 9 mm ammunition with four rounds, a box of .32 calibre ammunition with eight rounds, and other items.
- [56] From this, the justice could conclude that Monteith had a history of crimes of violence, which involved criminal associates. Coupled with the fact that DD was the victim and a key witness for the Crown, the evidence in totality was sufficient to enable the issuing justice to infer that Monteith could be in contact with others, and specifically criminal associates, and could be discussing the offences or matters related thereto with others, and could be directing people to look for DD, and that her safety could be in jeopardy, as the affiant asserted. Also, as Cpl. Chung asserted, such activities could constitute additional offences, related to the named offences. The affiant did not specify what offences, but potential offences could include obstruction of justice, or conspiracy to commit murder.
- [57] There was, therefore, a reasonable basis upon which the justice could conclude that the records would afford evidence respecting the commission of the offences.

C. NFPC Production Order

- [58] The NFPC production order was issued January 22, 2020 on the basis of an ITO sworn by Constable M. Carey, a police officer with IHIT, sworn January 22, 2020. It authorized production of audio recordings of telephone calls made by Carlos Monteith from NFPC for the period December 30, 2019 to January 22, 2020, as well as all documentation surrounding the telephone calls for the same period of time.

- [59] The production order stated that the justice was satisfied there were reasonable grounds to believe that the offence had been committed (murder of Kristijan Coric on September 28, 2019) and that the data and records in possession of NFPC will afford evidence respecting the commission of the offence.
- [60] As in the case of Mr. Monteith's application to set aside the Squamish search warrant, in relation to the NFPC production order, the applicant contends that the ITO set out insufficient evidence to connect Mr. Monteith to the murder of Mr. Coric. Mr. Monteith also argues that there is no basis offered in the ITO for the belief that anything of evidentiary value would be contained in the jail calls sought.
- [61] The NFPC jail calls are only relevant if there is a connection between the Coric murder being investigated and Mr. Monteith.
- [62] Constable Carey is the same officer who swore the ITO in support of the Squamish search warrant. She stated that she had reasonable grounds to believe the Carlos Monteith was involved in or had knowledge of the Coric murder. She stated that she based her belief upon, in summary, the following:
1. the "hit list" found in Monteith's possession on August 20, 2019, containing the initials "K-C", which she believed was a reference to Kristijan Coric;
 2. Monteith was released from custody and the hit list was returned to him. He was released on September 4, 2019, only three weeks prior to the murder of Mr. Coric;
 3. On November 17, 2019, DD was shot in her home in New Westminster by Monteith. He matches the description of the shooter in Kristijan Coric's homicide, by a witness, Francis Kustner;
 4. Monteith was living at DD's residence for a few months prior to the shooting. DD said that her boyfriend, LW, told her Monteith needed a place to "lay low" and implied that Monteith had murdered someone.
- [63] The reference to DD being told by LW that Monteith (supposedly) needed a place to "lay low" is in error. The affiant references para. 76. e. of the ITO, which is a reference to the basement tenant KP hearing this from LW, not DD. Careful review of the ITO by the justice could potentially have revealed this error. But in any event, given the nature of the information, whether its source was something that DD or KP heard from LW does not make a material difference.
- [64] This particular summary sets out limited evidence of the connection between Mr. Monteith and the murder. However, as noted, the ITO is to be reviewed in its totality, not on a piecemeal basis, and in a practical, non-technical and common sense basis: Liu, para. 39; Sadikov at para. 82.

- [65] Unsurprisingly, the evidence set out in the NFPC ITO sworn by Constable Carey is quite similar to the evidence set out by Constable Carey in the Squamish ITO. The NFPC ITO adds information relating to the results of the search of the Budget Inn, Squamish, on December 6, 2019, including that a box of 9 mm firearm ammunition was found, and evidence about the search warrant that police left there, linking Monteith to the Coric killing they were investigating.
- [66] In my view the NFPC ITO, when looked at in its totality, sets out sufficient reliable evidence which could reasonably be believed, on the basis of which the warrant could have issued.
- [67] In addition to the witness Francis Kustner mentioned specifically by Constable Carey, there were other witnesses who also described the shooter in ways that generally matched Mr. Monteith. Mr. Coric's companion at the scene, Megan Lao, stated that the shooter was very skinny, and lanky, and could have been black or Fijian. Sandra Alvarez stated that she saw a dark skinned black male, young looking.
- [68] By way of amplification, the parties agree that the NFPC ITO should be amended to include the fact that on December 7, 2019 Alvarez was shown a photo-pack containing Monteith's photograph, and did not make an identification.
- [69] There were other witnesses who provided conflicting evidence, also set out in the ITO. However in my view it was open to the justice to conclude that the descriptions from the persons at the scene generally matched the description of Mr. Monteith given by DD and KP.
- [70] The ITO also set out that Mr. Monteith told DD he had recently gotten a teardrop tattoo under his eye, and had told her it was for "catching a body" and that he had killed someone. The ITO set out that KP had stated that Monteith had been at the DD residence for a few months, and he "supposedly needed to lay low because he just done a big job that he got paid \$60,000 for."
- [71] The ITO set out that Monteith had access to firearms, and was prepared to use them. He shot DD. He had a gun with him or in his possession when he was arrested by the police at the Deluxe Hotel on Kingsway. A box of ammunition was found on the search of his hotel room of the Squamish Budget Inn on December 6, 2019.
- [72] There was evidence supporting the inference that the Coric killing was a planned contract killing, which accorded with Mr. Monteith's statements to DD, and the information from KP about supposedly needing to "lay low" because "he had just done a big job that he got paid \$60,000 for". The evidence was that the shooter of Mr. Coric did not act alone. Someone else drove the Toyota Corolla getaway car. There was a tracking device found on the vehicle (the Mercedes G-Wagon) in which Mr. Coric was shot. The Toyota Corolla was found later the same day as the murder, having been set on fire. Evidence was set out that that another person, Faure, had purchased a gas canister and fuel at a gas station in the vicinity of the burned Toyota, on the day of the Coric killing, and the same day the burnt vehicle was found.

- [73] The fact that the Coric killing was done in association with other criminals is inherent in its fairly obvious nature as a contract killing.
- [74] The applicant argues that even if the information from DD and KP could be said to provide a basis for belief that Mr. Monteith had been involved in a recent murder, there was nothing to connect that to the murder of Mr. Coric, specifically. However, in my view, the issuing justice could have concluded that Mr. Monteith was indeed connected to the murder of Mr. Coric, on the basis of the general evidence about his involvement in a recent contract killing, the physical descriptions, and the hit list information.
- [75] The applicant argues that there was insufficient evidence to support the stated belief that the calls would contain anything of evidentiary value.
- [76] In arguing that the ITO set out no basis for the belief that anything of evidentiary value would be contained in the information sought, the applicant understandably concentrates on the single paragraph in the ITO in which Constable Carey sets out the grounds for her belief that the telephone calls will afford evidence of the named offence.
- [77] Mr. Monteith was in custody at NFPC at the relevant time, in relation to the shooting of DD. As grounds for her belief that the telephone calls would afford evidence of the Coric homicide, Constable Carey stated that Monteith would have become aware that the police were investigating him in connection with the Coric homicide, because a copy of a search warrant regarding the murder of Coric was left in the Squamish hotel room that was being used by Monteith. That search warrant had been granted December 6, 2019, and the search of the Squamish Budget Inn took place on the same day.
- [78] Constable Carey noted that Monteith's aunt had been authorized to clean out the Squamish Budget Inn hotel room associated to Monteith. The room was cleaned out on either December 30 or December 31, 2019. Constable Carey stated that it was reasonable to believe that Monteith's aunt would locate the copy of the search warrant during the cleanup, and that Monteith would have been made aware of the existence of the search warrant referencing the murder of Coric. Thus, he would be made aware that the police were investigating him in relation to the Coric killing.
- [79] In the ITO, Constable Carey stated that it was reasonable to believe that Monteith would be talking to family and friends while in custody at NFPC, via telephone, since this was his main way of communicating to anyone outside of NFPC while in custody. She added, "Based on my experience, it is reasonable to believe Monteith spoke to other individuals on the phone regarding the named offence after learning about the search warrant in the Squamish hotel room".
- [80] Mr. Monteith argues that Constable Carey did not set out details as to her experience that would have led her to this conclusion. He argues that all that is noted in the ITO is that Constable Carey had been an RCMP officer since August 2015, and had been attached to the Integrated Homicide Investigation Team for four months at the time the ITO was sworn.

- [81] Clearly, it would have been helpful had Constable Carey set out in some further detail the reasons for her stated belief that Mr. Monteith would be talking to family and friends regarding the named offence, in the particular paragraph of the ITO in which she makes those statements. However, the ITO must be looked at as a whole. There was ample evidence in the ITO to support the inference that Coric's murder was a carefully planned and contracted killing, for which the perpetrator was paid by others to commit, and who was not acting alone in carrying out the offence. Coupled with the evidence linking Monteith to the shooting, there was reliable evidence that the named offence was carried out by Monteith in association with others, and at the direction of others, for money.
- [82] There was also evidence that Monteith had a pronounced tendency to recklessly brag about the crime and his involvement in it. Monteith told DD, a person he barely knew, that he had recently gotten a teardrop tattoo under his eye, and told DD that it was for "catching a body" and that he had killed someone. KP is quoted as stating that Monteith had been dropped off to stay at DD's residence because he supposedly needed to lay low because he had just done a big job that he got paid \$60,000 for. This indicated that Monteith had told someone these things. A reasonable inference is that Monteith would continue to speak about the shooting, to others.
- [83] Monteith had recklessly brought the alarming "Blood bath hit list" with him to SPSC, when he was transferred there from Kent institution in August 2019.
- [84] In summary, the ITO as a whole establishes a reasonable basis for Constable Carey's stated belief that Monteith would speak to family or friends (including criminal associates) while in custody, in connection with the Coric murder. This was a common sense inference available to the issuing justice, that did not depend upon vast experience on the part of Constable Carey.
- [85] The inference that a person who commits a murder in concert with others to further the interests of the gang will discuss the murder with confederates is supported in the case law: Ferguson, at paras. 75 to 84; R. v. Riley, [2009] O.J. No. 738, 2009 CanLII 7177 at para. 134 (Ont. S.C.). Similar conclusions have been reached in other cases: R. v. Latimer, 2020 BCSC 2173, at paras. 75-77; R. v. Abo Zead, 2020 BCSC 1970, at paras. 53-62; Hayer, paras 46-48, 63.
- [86] The applicant relies on R. v. Siniscalchi, 2010 BCCA 354. Siniscalchi is distinguishable. In Siniscalchi, the only evidence placed before the authorizing justice to support reasonable grounds to believe that the applicant's inmate telephone calls would afford evidence respecting the commission of an offence was about a tip from a confidential informant. The affiant stated that a police officer (Jakeway) had received information from another police officer (Raffele), who received a tip from a confidential informant that the accused had called his brother after his arrest and had confessed his involvement in several robberies. There was no information provided from which the authorizing justice could assess the reliability of the confidential informant's tip, as required by R. v. Garofoli, [1990] 2 S.C.R. 1421, 1990 CanLII 52. Unlike Siniscalchi, in this case the affiant did not merely rely on an

unverified and undetailed tip from a confidential informant.

V. Conclusion

[87] In conclusion, the applicant has not established that the three judicial authorizations at issue are invalid. Therefore, the application is dismissed.

"Verhoeven J."

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