
CANADA / JUDGMENT

R. v. Perkins

2018 BCSC 310

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Supreme Court of British Columbia

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2018 BCSC 310 R. v. Perkins

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Perkins,

2018 BCSC 310

Date: 20180209

Docket: 65705

Registry: Chilliwack

Regina

v.

Corey Jim Perkins

Before: The Honourable Mr. Justice Ehrcke

Oral Ruling on Voir Dire #3

re Application to Strike General Warrant for Storage Locker

Counsel for the Crown:

C. Fast

O. Bick

Counsel for the Accused:

D. Markovitz

Place and Date of Hearing:

New Westminster, B.C.

February 8-9, 2018

Place and Date of Judgment:

New Westminster, B.C.

February 9, 2018

- [1] THE COURT: The applicant/accused, Corey Jim Perkins, is charged with possession of cocaine and fentanyl for the purpose of trafficking and with illegal possession of various firearms on December 15, 2014.
- [2] In this investigation the Abbotsford Police Department obtained a series of orders and warrants as their investigation progressed. Corey Perkins brought an application challenging the validity of these various orders and warrants, and these challenges have been considered one by one in the course of a voir dire.
- [3] We are now at the point where the matter in issue is the validity of a general warrant that was granted December 12, 2014, with respect to Storage Locker #1108 at Trans Canada Self Storage, 2992 Pinegrove Street, Abbotsford, British Columbia.
- [4] These present reasons should be read in conjunction with the various rulings that I have already delivered on January 30, February 1, February 7, and two sets of reasons on February 8, 2014.
- [5] It is important to read these reasons in conjunction with the earlier ones, not only because those previous rulings provide the necessary context, but also because in those rulings I have reviewed and summarized the legal principles relating to so-called Garofoli applications, including the standard of review and the basis for assessing whether the reasonable grounds for belief standard has been met. I do not propose in these reasons to repeat my review of those legal principles, but anyone reading these reasons must be aware that I am applying those same principles in this ruling.
- [6] Another reason why it is necessary to read these present reasons along with the reasons for the previous rulings is that although separate Informations to Obtain ("ITOs") were affirmed by Cst. Davies in support of the tracking warrant, the production order and the general warrant for the storage locker, many of the paragraphs from the earlier ITOs were carried over and became part of the ITOs sworn on December 12, 2014, in support of the general warrant.
- [7] In the course of my earlier rulings I addressed submissions that the parties made in respect to various paragraphs of the earlier ITOs, and to the extent that those paragraphs have been carried over into the ITO sworn December 12, 2014, I shall not repeat here everything that I have said previously.

[8] The issuance of general warrants is governed by s. 487.01 of the Criminal Code, which provides:

487.01 (1) A provincial court judge, a judge of a superior court of criminal jurisdiction or a judge as defined in section 552 may issue a warrant in writing authorizing a peace officer to, subject to this section, use any device or investigative technique or procedure or do any thing described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property if:

- (a) the judge is satisfied by information on oath in writing that there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed and that information concerning the offence will be obtained through the use of the technique, procedure or device or the doing of the thing;
- (b) the judge is satisfied that it is in the best interests of the administration of justice to issue the warrant; and
- (c) there is no other provision in this or any other Act of Parliament that would provide for a warrant, authorization or order permitting the technique, procedure or device to be used or the thing to be done.

[9] The preconditions for a general warrant were summarized by Cromwell J. (in dissent, but not on this point) in *R. v. TELUS Communications Company Co.*, 2013 SCC 16, at paras. 119-120:

[119] A judge may issue a general warrant, provided for in s. 487.01, to authorize a peace officer to "use any device or investigative technique or procedure or do any thing described in the warrant that would, if not authorized, constitute an unreasonable search or seizure". The issuing judge must be satisfied on the basis of information on oath that there are reasonable grounds to believe that an offence has been or will be committed and that information concerning the offence will be obtained through the use of the technique for which the police seek authorization.

[120] Given the wide array of techniques that may be authorized under a general warrant, Parliament has imposed additional, stringent conditions. First, unlike search warrants and production orders that may be issued by judges or justices of the peace, general warrants may only be issued by judges (s. 487.01(1)). Second, "the judge [must be] satisfied that it is in the best interests of the administration of justice to issue the warrant" (s. 487.01(1)(b)). Third, a general warrant must "contain such terms and conditions as the judge considers advisable to ensure that the search or seizure authorized by the warrant is reasonable in the circumstances" (s. 487.01(3)). Fourth, a general warrant may be issued only if "there is no other provision . . . that would provide for a warrant, authorization or order permitting the technique, procedure or device to be used or the thing to be done" (s. 487.01(1)(c)). ...

- [10] As set out in para. 119 of TELUS, in order to obtain a general warrant two things must be established on a reasonable grounds standard: there must be reasonable grounds to believe that an offence has been or will be committed and reasonable grounds to believe that the proposed investigative technique will afford evidence of that offence. In the present case, no one has suggested that the conditions referred to in para. 120 of TELUS have not been met.
- [11] On February 8, 2018, I gave a ruling that the general warrant to access and examine the contents inside Locker #1108 of Trans Canada Self Storage located at 2992 Pinegrove Street, Abbotsford, British Columbia could not be sustained on the basis of the redacted version of the ITO that Cst. Davies affirmed December 12, 2014, because the ITO as redacted did not attain the required standard of reasonable grounds to believe that Corey Perkins had committed a drug offence.
- [12] As previously noted, the December 12, 2014 ITO of Cst. Davies is substantially similar to the December 10, 2014 ITO that was used when applying for the production order.
- [13] In my February 8, 2018, ruling on the general warrant I said in relation to the December 12, 2014 ITO:

For reasons substantially the same as the reasons I delivered on February 7, 2014, in respect of the production order, I find that based on the redacted ITO in its present form, I can place no meaningful interpretation on the evidence from Source E, as set out in paragraph 43.

Looking at the remainder of the ITO, I find that although the case is very close to the line, the requisite standard has not been met on the issue of whether there were reasonable grounds for Cst. Davies' belief that Corey Perkins had committed a drug offence. As this is one of the preconditions for issuing a general warrant, I find that, on the basis of the present materials, the general warrant for the storage locker cannot be sustained.

- [14] Subsequent to the delivery of that ruling, the Crown applied to have the court consider a partially unredacted version of page 18 of the December 12, 2014 ITO in accordance with the so-called "Step 6 Garofoli procedure," as described in *R. v. Garofoli* (1990), 60 C.C.C. (3d) 161, at pp. 191-195 (S.C.C.).
- [15] I examined the partially unredacted version of page 18 (paragraph 43), which was then marked as Exhibit 4 on the voir dire and sealed as an exhibit. I also approved a judicial summary of the excised material, which was given to Mr. Perkins and his counsel.
- [16] I am satisfied that the judicial summary provides a sufficient basis for Mr. Perkins and his counsel to appreciate the nature of the deletions and to make full answer and defence. A copy of that judicial summary has been marked as Exhibit 5 on the voir dire.
- [17] With the new information that was not before me at the time of my ruling on February 8, 2018 in respect of the general warrant, paragraph 43(f), (g) and (i) of the ITO may now be understood in this way, as explained in the judicial summary:

- (f) Source E identified a booking photo of Corey Perkins as being [NAME].
- (g) Source E described [NAME] as white and skinny with a long skinny face and had a tattoo on the top of his hand. [Cst. Toews observed a tattoo on the top of Perkins' hand.] ...
- (i) Source E picked up cocaine [redacted] directly from [NAME]. [Perkins has a criminal record for drug trafficking.]
- [18] In the previously redacted version of this material it was not clear whether Source E was referring to the same individual in clauses (f), (g) and (i). Following the Garofoli Step 6 procedure, it is now clear that Source E was referring to the same person in each of those clauses, that is Source E identified a booking photo of Corey Perkins as being a person he referred to by a certain name. He described that person as being white and skinny with a long skinny face and had a tattoo on the top of his hand, and Source E picked up cocaine [redacted] directly from that person.
- [19] Counsel for Mr. Perkins points out that he still does not know the specific name that Source E used and this may have been useful information for him as he may have been in a better position to know whether Source E was mistaking Mr. Perkins for someone else and to narrow the timeframe referred to in clause (i).
- [20] There is some validity to that submission, but Crown counsel submits that it cannot reveal the actual name used by Source E without compromising informer privilege, and this is an example of the balancing of interests that must be accommodated in the Garofoli procedure. I am satisfied that despite this, Mr. Perkins is able to make full answer and defence.
- [21] Although there are reasons for scrutinizing the reliability of Source E in light of the short time he had been an informant and the fact that his motivation was money and consideration of charges he was currently facing, I find that some weight can properly be put on the information he supplied. I take into account that information he supplied previously led to the police seizing illegal drugs. I also take account of the fact that the information he supplied in the present investigation was from personal knowledge. Finally, the information he supplied was relatively specific and detailed.
- [22] Counsel for Mr. Perkins submits that, in any event, this new information does not add anything to what was known before, since we already knew from paragraph 60 of the ITO that Mr. Perkins had a criminal record for drug trafficking in 2009 and possibly this might be the incident that Source E was referring to. In short, he submits that the new information obtained in the Garofoli Step 6 procedure is too weak and insignificant to support a finding of reasonable grounds for belief.
- [23] Clearly this new information tells us things we did not know before. We now know from Source E that the drug involved was cocaine and that he received it directly from the person he identified with Corey Perkins' photograph. The information we previously had, namely that Corey Perkins had a 2009 criminal record for drug trafficking, did not tell us that he trafficked in cocaine or that he personally transferred the drugs to someone else. There are

other ways that the 2009 conviction could have come about, such as being a party to an offence.

- [24] In any event, the issue before me is not whether the new material on its own could provide reasonable grounds for Cst. Davies' belief that Corey Perkins was involved in a drug offence, but rather whether the entire constellation of information, including both the new information and the information in the rest of the ITO that I previously considered in my February 8, 2018 ruling, which incorporated by reference the reasons that I gave on February 7, 2018 in relation to the similarly-worded ITO used for the production order, is sufficient to provide reasonable grounds for belief. As I noted in my previous ruling, although the redacted ITO that was then under consideration did not meet the reasonable grounds standard, I found the case to be very close to the line.
- [25] The new information is stronger than the information we previously had from Source D, because Source D said that Phil Aslin supplies Himpfen with drugs and Aslin works for someone named "Corey." This left it as a matter of inference that the person he knew as "Corey" was the accused Corey Perkins.
- [26] This is different from Source E, who identified a booking photograph of Corey Perkins, and who correctly described his appearance, including a tattoo on his hand.
- [27] As well, it tightens the inference about the suspected drug transaction on October 21, 2014, when there was a meeting in the parking lot of Twisters Gym, where Himpfen exited his car, entered the passenger seat of the blue Mercedes owned by Perkins, got out again after 30 seconds, and both vehicles then drove off.
- [28] Counsel for Mr. Perkins previously submitted that even if this was a drug transfer, as Cst. Davies opined, there was no reason to think that Mr. Perkins was supplying drugs to Himpfen rather than the other way around. The new information from Source E provides some reason to believe that Mr. Perkins is someone who supplies drugs.
- [29] Having now considered the adequacy of the grounds in support of the general warrant for the storage locker in light of the partially unredacted version of page 18 of the ITO, I find that the additional information from Source E is sufficient, along with the other material from the December 12, 2014 ITO, to provide reasonable grounds for Cst. Davies' belief that Corey Perkins was involved in a drug offence of trafficking or possession for the purpose of trafficking.
- [30] I turn then to the second requirement for obtaining a general warrant: does the material provide reasonable grounds to believe that the proposed investigative technique will afford evidence of the offence of possession of a controlled substance for the purpose of trafficking. The investigative technique requested here was to view, access, examine, photograph and take samples of the contents inside Locker #1108 of Trans Canada Self Storage.

- [31] Counsel for Mr. Perkins submits that paragraph 28 of the ITO, dealing with the general warrant for Canada Post, should be excised on this review because the Crown now concedes that that warrant should not have been granted in light of provisions of the Canada Post Corporation Act, R.S.C. 1985, c. C-10. This, however, is of no consequence as paragraph 28 explicitly states that to date no packages had been opened or examined. There is, therefore, no possibility that this paragraph could have improperly influenced the decision of the authorizing judge.
- [32] Counsel for Mr. Perkins submits that several other paragraphs from the ITO must be excised for the purpose of this review, including paragraphs 24, 62(b), 62(c), 67, and the paragraphs dealing with Source D and Source E.
- [33] I do not agree that a basis has been shown for excising any paragraphs. At best, the submissions made by counsel for Mr. Perkins should be taken as affecting the weight to be attached to various paragraphs.
- [34] As Lambert J.A. observed in *R. v. Lam*, 2002 BCCA 99, at para. 10:

It is important that the Information be examined as a whole and not one piece of evidence at a time, because each piece of evidence colours other pieces of evidence and a fuller picture emerges by considering all the evidence together. That does not justify including material that is irrelevant but relevance can only be tested in relation to the total picture painted in the Information.

- [35] Counsel for Mr. Perkins submits that the present case is similar to *R. v. Liu and Le*, 2014 BCCA 166. There, the Court of Appeal found that a warrant must be struck down because, although there were reasonable grounds to believe the accused were trafficking drugs, there was no reasonable basis to believe that evidence of drug trafficking would be found at their residence. To similar effect, counsel for Mr. Perkins also refers to *R. v. Cheng*, 2013 BCSC 1979, and *R. v. Bishop*, 2018 BCSC 42.
- [36] The present case is different, however. Here, the place in question is not a residence but a storage locker at a commercial facility. The Court of Appeal in *Liu* noted that a person, even a drug dealer, would naturally have reason to come and go from his residence, regardless of whether he or she was storing drugs there. In the case of a storage locker, one would not typically have reason to go there unless one was putting something into storage or taking it out. Although it is, of course, true that many people use storage lockers for completely lawful purposes, the present case has two peculiarities: first, the frequency with which Mr. Perkins attended, and second, the fact that the locker was not rented in his name. As Crown counsel submitted, why would a person who had innocuous things to store do so in someone else's locker, rather than renting a locker in his or her own name?

- [37] In addition to this, there is more specific information which points to a connection between the storage locker and drug trafficking. The information in the ITO shows that Mr. Perkins attended at the storage facility on November 19, December 3, December 4, December 5 and a second time on December 5, and then on December 7, 2014.
- [38] Some of the observations established that he not only attended but actually used the storage facility. On December 3, 2014, he came there with two large bags and a blue Rubbermaid or Tupperware tote. On the first December 5 attendance he brought out a white and brown parcel, and on December 7 he brought out a black paper shopping bag with a white logo.
- [39] Moreover, the timing of visits is significant. As described in paragraph 51 of the ITO, on November 19, 2014, police surveillance observed Mr. Perkins' Mercedes leaving the parking lot of Trans Canada Self Storage at 14:36 hours. At 14:51 hours, he drove his Mercedes into the driveway of the Taylor Road farm, where he unloaded a blue cooler and black man-bag from the Mercedes and walked around the north side of the barn. At 15:23 hours, he was seen carrying a yellow package from the barn and entering the Mercedes. A few minutes later, at 15:27 hours, he was involved in a suspicious transaction with someone in a red pickup truck in the parking lot of 6418 Mount Lehman Road. The man in the red pickup drove away after a one-minute meeting. Cst. Davies opined that this was consistent with trafficking. At 15:46, Mr. Perkins was seen carrying a yellow package to the post office and leaving three minutes later without the package.
- [40] With respect to activities on December 1, 2014, paragraph 52 of the ITO describes Mr. Perkins keying his way into the barn at Taylor Road at 15:20 hours, then exiting the barn, driving to the post office and mailing a large envelope. At 17:24 hours there was a meeting in a McDonald's parking lot, where Perkins' Mercedes parked adjacent to a vehicle with licence 067 RKF. Mr. Perkins entered the passenger seat of that other vehicle, then left and drove away after two minutes. The driver of that other vehicle was someone with a record for possession of a controlled substance for the purpose of trafficking. Mr. Perkins then returned to the Taylor Road farm, where he was observed moving two large Tupperware containers in the loft of the barn. Two days later, at 19:41 hours on December 3, 2014, he was observed on video bringing a blue Tupperware tote into Trans Canada Self Storage.
- [41] At paragraph 64 of the ITO, Cst. Davies states that he reviewed the tracker data and discovered that, in addition to the dates set out above, the Mercedes arrived at Trans Canada Self Storage on December 11, 2014, at 18:54 hours, and left at 19:01 hours, then went to the Taylor Road farm at 19:18 hours and left there at 19:42 hours, and finally arrived at 34329 Green Avenue at 20:04 hours.
- [42] Counsel for Mr. Perkins submits that there is an anomaly in the information at paragraphs 64 and 65(c) of the ITO. At paragraph 65(c)(iv) we are told that staff at Trans Canada Self Storage provided Cst. Coghill with a summary of access events for Locker #1108 from July 21, 2014 to December 11, 2014. That list contains 24 events, the last one being December 7, 2014, at 16:23 hours for one minute. The summary does not list an event on December 11,

2014, from 18:54 hours to 19:01 hours. Mr. Perkins submits that this is contrary to the information from the tracking device on the Mercedes.

[43] The apparent anomaly is explained by the fact that, as set out in paragraph 65(a) of the ITO, Cst. Coghill attended Trans Canada Self Storage to serve the production order on December 11, 2014, at 10:00 hours. Because this was in the morning, the summary of events that was provided could not have included events in the evening of that date, such as an attendance on December 11, 2014, from 18:54 hours to 19:01 hours.

[44] As set out in *R. v. Tran*, 2007 BCCA 491, at para. 12:

...the objective reasonableness of the arresting officer's grounds must be assessed from the standpoint of the reasonable person "standing in the shoes of the police officer".

[45] At paragraph 1 of the ITO, Cst. Davies described his extensive training and experience in drug investigations. At paragraphs 68 to 69, he summarized the basis for his belief that Mr. Perkins was using both the barn at Taylor Road and the storage locker at 2992 Pinegrove Street as stash houses for storing illegal drugs.

[46] On the basis of the material in the ITO, as supplemented by the Garofoli Step 6 procedure, I am satisfied that there was a proper basis upon which the judge could have found reasonable grounds for belief that Mr. Perkins was involved in a drug offence, and that information concerning the offence would be obtained through the use of the investigative technique of viewing, accessing, examining, photographing and taking samples of the contents inside Locker #1108 of Trans Canada Self Storage.

[47] Mr. Perkins' application to strike down the general warrant for the storage locker is dismissed.

The Honourable Mr. Justice W.F. Ehrcke

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