

CANADA / JUDGMENT

R. v. Perkins

2021 BCCA 9

COURT

British Columbia Court of Appeal

DECIDED

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2021 BCCA 9 R. v. Perkins

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Perkins,

2021 BCCA 9

Date: 20210112

Docket: CA45393

Between:

Regina

Respondent

And

Corey Jim Perkins

Appellant

Before:

The Honourable Madam Justice Fenlon

The Honourable Madam Justice Griffin

The Honourable Mr. Justice Voith

On appeal from: An order of the Supreme Court of British Columbia, dated March 12, 2018 (R. v. Perkins, 2018 BCSC 823, Chilliwack Docket 65705-3).

Counsel for the Appellant (via videoconference):

D. Markovitz

Counsel for the Respondent (via videoconference):

C.W. Greenwood

Place and Date of Hearing:

Vancouver, British Columbia

December 18, 2020

Place and Date of Judgment:

Vancouver, British Columbia

January 12, 2021

Written Reasons by:

The Honourable Madam Justice Griffin

Concurred in by:

The Honourable Madam Justice Fenlon

The Honourable Mr. Justice Voith

Summary:

Appeal from conviction on two counts of possession of cocaine, six counts of illegal possession of firearms, and two counts of possession of prohibited devices. The charges arose from the seizure of drugs, firearms, and firearm accessories upon the execution of various warrants. At trial, the appellant challenged the facial validity of the warrants. The judge initially held that the warrants were invalid, based on the informations to obtain ("ITOs") that were redacted for informant protection. After the Crown provided the judge with partially unredacted ITOs, the judge found the warrants were valid. The appellant appeals on the grounds that the unredacted information was insignificant, the new information revealed had been virtually conceded, and the judge treated informant evidence inconsistently. Held: Appeal dismissed. The trial judge did not err in finding the unredacted information was significant or in his weighing of that evidence. If the appellant did concede the inference available from the unredacted ITO, the judge did not accept it. There was no inconsistency in the way the judge treated informant evidence.

Reasons for Judgment of the Honourable Madam Justice Griffin:

Introduction

- [1] The appellant, Corey Perkins, appeals his convictions on March 12, 2018, of two counts of possession of cocaine and fentanyl for the purpose of trafficking; six counts of illegal possession of various firearms (including restricted semi-automatic rifles, a prohibited sawed-off shotgun, and restricted or prohibited handguns); and two counts of possession of prohibited devices, namely detachable cartridges and silencers.
- [2] The firearms were discovered after the execution of search warrants on a storage locker, the keys to which were in the appellant's blue Mercedes car, which had been the subject of a tracking warrant and was also the subject of a search warrant. The keys found in the Mercedes also opened a safe inside the storage locker, which contained cocaine, and a safe located in a barn on Taylor Road. The police searched the barn and found an additional firearm, as well as drugs in the safe. The appellant's fingerprints were inside the safe. An additional firearm was discovered on execution of a search warrant on the appellant's residence. Cocaine and fentanyl were also found in an envelope delivered by the appellant to a Canada Post outlet. Similar packaging was found in the barn. Surveillance of the appellant showed him attending the storage locker and the Taylor Road barn and moving containers around these places as well as to the Canada Post outlet. The surveillance of the appellant's Mercedes revealed short meetings in parking lots, consistent with drug transactions, based on police experience.
- [3] This appeal focuses on a number of voir dire rulings at trial concerning evidence obtained by way of a production order served on the owner of the storage facility, a general warrant for the storage locker, and search warrants covering the storage locker, the barn, and the appellant's home and vehicle. The rulings addressed applications by the appellant for declarations that his right to be secure against unreasonable search and seizure, guaranteed by s. 8 of the Charter, was violated by the searches, and for an order pursuant to s. 24(2) of the Charter excluding all evidence obtained.
- [4] The judge initially held that the information to obtain ("ITO") was insufficient to justify the production order and the general warrant, in that the information did not provide reason to believe that the appellant was someone who had committed a drug offence. This was in part because the judge was unable to give weight to information provided by a confidential informant known as Source E. That information was initially redacted from the evidence presented to the judge in order to protect the identity of the informant.
- [5] After the judge found the ITO to be incapable of supporting the warrants, the Crown supplemented the evidence placed before the judge. This supplemental evidence revealed to the judge that Source E identified the appellant by sight, used a single consistent name for him, and had picked up "cocaine [redacted]" from him. The judge approved a judicial summary of the evidence to this effect, which was provided to the appellant. This was all done pursuant to step six of the procedure laid out in *R. v. Garofoli*, [1990] 2 S.C.R. 1421 at p. 1461.

- [6] Based on the supplemented ITO, the judge upheld the production order, general warrant and other search warrants as valid. The evidence obtained by use of these warrants was then admitted against Mr. Perkins.
- [7] The sole issue on appeal is whether the judge erred in law in finding that the additional, unredacted information in the ITOs, together with the pre-existing information, was sufficient to support the production order and warrants. The appellant submits that there was no material change in the information from what the judge had earlier determined to be insufficient. The appellant characterizes the judge's decision as reversing his earlier rulings.
- [8] It is important to note that the appellant takes no issue with the judge's adoption of step six of the procedure in *Garofoli*. The appellant also does not take issue with the judicial summary. He accepts that the judicial summary provided a sufficient basis for the appellant to appreciate the nature of the unredacted evidence shown to the judge.
- [9] Rather, the appellant simply says the unredacted information provided to the judge, and summarized for the appellant, was too insubstantial to have tipped the balance and to have caused the judge to change his conclusion that the ITO was insufficient to support the production order and warrants.
- [10] For the reasons that follow, I am not persuaded that the judge erred. The judge did not "reverse" his earlier rulings. He followed the correct procedure in considering the unredacted information, applied the correct legal test, and properly appreciated all of the evidence in upholding the production order and warrants as valid.

Standard of Review

- [11] Before I delve into a review of the background and various rulings by the trial judge concerning the warrants, it is important to remind ourselves of the standard by which the appeal court may review the decision of a trial judge who is tasked with the review of a judicial officer's order authorizing a search or seizure.

Court of Appeal Standard of Review

- [12] This Court's role in reviewing the trial judge's findings in respect of a warrant review is deferential. The Court should decline to interfere with the trial judge's decision absent an error of law, a misapprehension of evidence, or a failure to consider relevant evidence: *R. v. Slemko*, 2020 BCCA 207 at para. 53; *R. v. Reid*, 2017 ONCA 430 at para. 8; *R. v. Grant* (1999), 132 C.C.C. (3d) 531 (Ont. C.A.) at para. 18, leave to appeal ref'd [1999] S.C.C.A. No. 168; *R. v. Ebanks*, 2009 ONCA 851, leave to appeal ref'd [2010] S.C.C.A. No. 84.

Reviewing Judge's Standard of Review

- [13] The trial judge's role is to determine whether the order could have been granted based on the record that was before the authorizing justice, as amplified on review, not whether, in the view of the trial judge, the order should have been granted: *R. v. Whitaker*, 2008 BCCA 174 at para. 43; leave to appeal ref'd [2008] S.C.C.A. No. 296; *R. v. Araujo*, 2000 SCC 65 at para. 51; *R. v. Al-Maliki*, 2005 BCCA 157.
- [14] The production order and warrants at issue on this appeal all required the justice to first conclude that the evidence in support of the warrant provided "reasonable grounds to believe" that the offence described in the warrant had been committed. The offences alleged in this case were possession of drugs for the purpose of trafficking and trafficking in drugs contrary to ss. 5(1) and (2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 ("CDSA"). It was the determination of "reasonable grounds to believe" these offences had been committed that is at issue on this appeal.
- [15] The justice considering the applications for the production order and warrants at issue had to also determine that there were reasonable grounds to believe that execution of the order and warrants would afford evidence of these offences. The reviewing judge's determination that this aspect of the test was met is not at issue on this appeal.
- [16] The "reasonable grounds to believe" standard is applied in several different contexts. It was explained in *Whitaker*:
- [39] The "reasonable grounds" standard is well-known. The Supreme Court of Canada said this about it in *Mugesera v. Canada (Minister of Citizenship & Immigration)*, [2005] 2 S.C.R. 100, 2005 SCC 40:
- 114 The first issue raised by s. 19(1)(j) of the Immigration Act is the meaning of the evidentiary standard that there be "reasonable grounds to believe" that a person has committed a crime against humanity. The FCA has found, and we agree, that the "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities: *Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433 (C.A.), at p. 445; *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (C.A.), at para. 60. In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information: *Sabour v. Canada (Minister of Citizenship & Immigration)* (2000), 9 Imm.L.R. (3d) 61 (F.C.T.D.)
- [40] The judgment of Madam Justice Wilson in *R. v. Debot*, [1989] 2 S.C.R. 1140 (at 1166), is also apt:

The question as to what standard of proof must be met in order to establish reasonable grounds for a search may be disposed of quickly. I agree with Martin J.A. that 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.

[41] A determination with respect to whether reasonable grounds exist requires a consideration of the "totality of the circumstances": *R. v. Bracchi*, 2005 BCCA 461, 201 C.C.C. (3d) 35 at para. 20; *Re Church of Scientology & The Queen (No. 6)* (1987), 31 C.C.C. (3d) 449 (Ont. C.A.) at 502. This means that, "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 of the evidence together": *R. v. Lam*, 2002 BCCA 99, 172 B.C.A.C. 161 at para. 10.

[42] Further, the assessment of the facts relied upon to establish reasonable grounds is made on a practical, non-technical, and common sense basis: *R. v. Sanchez* (1994), 93 C.C.C. (3d) 357 (Ont.Ct.)(G.D.)) at 367. As Mr. Justice Cumming observed in *R. v. Charlton* (1992), 15 B.C.A.C. 272, the person deciding whether the reasonable grounds standard has been met is entitled to "put two and two together": para. 34.

[Emphasis in original.]

[17] Warrants are obtained on an ex parte basis, frequently relying on information provided by confidential informants.

[18] The dilemma when reviewing the basis for a warrant is how to protect three interests: enforcing the law; informer privilege, which is designed to protect a confidential informant's safety; and an accused's right to make full answer and defence: *R. v. Crevier*, 2015 ONCA 619 at para. 1. In *Garofoli*, the Supreme Court of Canada established a six-step editing procedure to address that dilemma.

[19] The *Garofoli* procedure can be briefly summarized as follows. Initially, the information produced to the defence and the court on review of the warrant can be edited to protect the identity of the confidential informant. If, after redaction of the confidential information, the reviewing judge considers the remaining information to be insufficient to support the warrant, the Crown may apply to produce some of the previously redacted material to the judge. This is "step six" of the *Garofoli* procedure. The reviewing judge will only consider the newly unredacted material if satisfied that a judicial summary of it has been provided to the defence that provides the defence with enough knowledge to still be able to challenge it. It is this procedure that was followed here, and the appellant does not suggest it was done incorrectly.

[20] When considering whether information provided by a confidential informant, together with other information, meets the "reasonable grounds for belief" standard, the reviewing judge must consider whether the ITO provides sufficient details to be able to assess the informant's reliability. In *R. v. Debot*, [1989] 2 S.C.R. 1140 at p. 1168, Wilson J. identified

three criteria as the focus of assessing an informant's evidence: the information must be compelling; it must come from a credible source; and it must be corroborated by police investigation prior to being relied on. The consideration of the informant's credibility can include evidence from the police as to the quality of the information received in the past from this informant and the motives of the informant. None of these factors form a separate test, and weaknesses in one area may be offset by strengths in another, but these factors are part of the "totality of the circumstances" that must meet the standard of reasonable grounds for belief.

- [21] In a challenge to an issued warrant, a distinction is made between facial defects and subfacial defects, as explained in *Slemko* at para. 2:

A warrant may be quashed when the Information to Obtain ("ITO") the warrant does not set out reasonable and probable grounds to believe that an offence has been committed and that there is evidence to be found at the place of the search (a facial defect); or because the reviewing judge is satisfied the warrant was founded upon false, inaccurate or misleading evidence (a subfacial defect).

- [22] The present appeal involves a facial challenge to the warrants in question. There is no allegation that the information provided to obtain the warrants was in error, and so there was no amplification of the record on review to correct good faith errors.
- [23] The appellant does not allege that the judge erred in law in respect of any of the above principles that applied to his task of reviewing the issuance of the production order and warrants.
- [24] Indeed, it is clear that the judge properly instructed himself on these principles in his reasons, citing *Whitaker* and *Debot*, among other authorities.

Background

- [25] The judge was required to make a number of voir dire rulings regarding admissibility of evidence obtained by warrant. Not all of these rulings are the subject of appeal, but the judge's analysis of the evidence set out in the relevant ITOs was sometimes a necessary stepping-stone for his subsequent rulings.
- [26] I will focus only on those rulings relevant to the issue on this appeal.

February 1, 2018 Ruling re Tracking Warrant

- [27] At trial, the appellant challenged the validity of a warrant issued on November 6, 2014, to track the movements of a certain blue Mercedes automobile registered in the name of the appellant (the "Tracking Warrant"). The Tracking Warrant was issued on the basis of an ITO affirmed by Cst. Davies on November 6, 2014. The information in this ITO was carried forward into additional ITOs affirmed by Cst. Davies.

- [28] The appellant sought a declaration that the Tracking Warrant should not have been granted. The judge dismissed that application on February 1, 2018, in reasons indexed as 2018 BCSC 232 ("Ruling re Tracking Warrant"). No issue is taken with this decision.
- [29] While the Crown did not seek to have evidence obtained by way of the Tracking Warrant admitted at trial, that evidence was relevant because it was included in subsequent ITOs to obtain additional warrants, which were being challenged and are at issue on appeal.
- [30] In the judge's Ruling re Tracking Warrant, he noted that the standard for issuing such an order is "reasonable grounds to suspect" that an offence has or will be committed and that information relevant to the commission of the offence can be obtained through use of a tracking device: s. 492.1(1) Criminal Code; R. v. Chehil, 2013 SCC 49. This standard is lower than the "reasonable grounds to believe" standard that applies to other warrants at issue.
- [31] The judge noted that the ITO made five assertions in support of a reasonable suspicion that a tracking device on the Mercedes would assist in obtaining information relevant to the offence of drug trafficking and possession for the purpose of trafficking, at para. 17:
- (a) that Mr. Himpfen ("Himpfen") and Ms. Losier ("Losier") were drug dealers;
 - (b) that Himpfen was observed meeting or tracked to a meet with the Mercedes;
 - (c) that Corey Perkins was the registered owner of the Mercedes and had been seen driving it;
 - (d) that Corey Perkins was reputed to be a drug dealer; and
 - (e) that Himpfen was supplied indirectly by someone called "Corey."
- [32] The ITO set out evidence from four confidential informants, Sources A, B, C, and D. The ITO set out information relating to their reliability, including their past history and the extent to which the information they provided was confirmed by other sources. The information provided by Source B was redacted. There was also surveillance evidence.
- [33] It is convenient to set out the judge's review of the evidence in the ITO, because, as noted, this evidence was a foundational part of the record and context for the judge's subsequent rulings:

THE ASSERTION THAT HIMPFFEN AND LOSIER WERE DRUG DEALERS

- [19] Paragraphs 22 to 28 of the ITO set out information obtained from Source A, who had a limited history with the Abbotsford Police as an informant, but whose information had in the past led to the arrest of persons with outstanding warrants.
- [20] Source A provided information that Esther Losier and Jason Himpfen sold cocaine and methamphetamine including out of Losier's car and out of Himpfen's house on Tims Street. Source A provided specific details that were confirmed by the police including that the two were "seeing" each other, that Losier lives on Capilano Place, and that Himpfen "hangs around" the "tent city" near the Salvation Army. The information that people came to

Himpfen's house at 2856 Tims Street to buy drugs is consistent with police observations of multiple people attending that address for short periods of time.

- [21] Source C provided information on Himpfen and Losier, some of which confirmed A's information; for example, the assertion at paragraph 30(a) that drugs were being sold out of 2856 Tims Street. Source C also provided information at paragraph 30(d) about three specific vehicles that Himpfen and Losier were driving, a Nissan 350Z, a Dodge Magnum, and a GMC Yukon, which they used to reload their drug dealers. The use of these three specific vehicles by Himpfen and Losier was confirmed by police surveillance.
- [22] Like Source A, Source C had a limited history as an informant, and his credibility might initially be assessed as low, but the information about the three vehicles was very specific, and it was confirmed by other evidence.
- [23] I am satisfied that the information provided by Source A and by Source C should not be entirely discounted, but rather can be considered along with the other evidence as part of the constellation of facts relevant to the assessment of the reasonable suspicion standard.
- [24] In any event, the assertion that Himpfen and Losier were drug dealers was supplemented by the facts set out in paragraphs 36 to 37, that Himpfen and Losier were arrested in the Nissan on October 28, 2014 for possession of controlled substances, at which time Losier had one cell phone in her boot and another in her bra, and Himpfen had \$1,522 in folded bills in his pants pocket. Losier was searched, and a plastic bag was found in her vagina. The bag contained a light brown powder and a bag of white crystals, which were suspected of being heroin and methamphetamine.

THE ASSERTION THAT MR. HIMPFFEN MET WITH THE MERCEDES OWNED BY MR. PERKINS

- [25] Surveillance evidence set out at paragraphs 32 to 33 of the ITO showed that on October 21, 2014, Himpfen and Losier left the Tims Street house in the Yukon and an hour later parked in the parking lot of the Twister Gym beside a blue Mercedes. Himpfen got out of the Yukon and into the front passenger seat of the Mercedes. About 30 seconds later, he got out of the Mercedes and back into the Yukon. Both vehicles then left the area. Cst. Davies affirmed that in his experience, these actions were consistent with a drug transaction.
- [26] The Yukon went directly to 32847 Capilano Place for two minutes and then returned to the Tims Street house.
- [27] During the surveillance, Cst. Nugent observed that the licence plate of the blue Mercedes contained the characters, "AD8." A subsequent check with ICBC showed a possible match for a blue Mercedes in Abbotsford with the licence, "AD8 81N." A CPIC check showed the registered owner of that vehicle to be Corey Jim Perkins of 34239 Green Avenue, Abbotsford, British Columbia. A query of the Abbotsford Police Department booking system produced a booking photo for the name Perkins at the Green Avenue address, and that photograph was

circulated to other police members. Surveillance on October 27, 2014, showed Mr. Perkins exiting the residence at 34239 Green Avenue and driving away in the Mercedes. He drove to a farm property at 29939 Taylor Road. At paragraph 34(d) of the ITO, it states, "Perkins appeared to be working in a greenhouse."

- [28] On November 3, 2014, Himpfen was observed exiting the Tims Street house and driving away in the Nissan. A tracking device on the Nissan showed that it stopped on Satchell Street just west of Ross Road. At the same time, the Mercedes was seen leaving eastbound from the same area. Satchell Street is a rural farm road, and no other vehicles were observed in the area at the time. The Mercedes parked at 29939 Taylor Road, and Corey Perkins was confirmed as the driver. The Nissan did not stop until it entered the driveway of the Tims Street house, where Himpfen was seen exiting the Nissan carrying a small white grocery bag.

THE ASSERTION THAT MR. PERKINS WAS REPUTED TO BE A DRUG DEALER

- [29] Paragraph 42 of the ITO shows that Cst. Davies performed a CPIC and PRIME search on November 4, 2014, and found that Corey Jim Perkins has convictions for trafficking in a Schedule I substance in 2009, a conviction for production of a Schedule I substance in 2009, and a conviction for possession of a Schedule I substance for the purpose of trafficking in 2009.

THE ASSERTION THAT HIMPFEN WAS SUPPLIED INDIRECTLY BY SOMEONE CALLED "COREY"

- [30] Source D provided information that Phil Aslin works for someone named "Corey" and that Phil Aslin supplies Himpfen with drugs. This information lacks specificity, in that Source D provided no surname for the person named "Corey". As well, Source D had a very limited history as an informant, and police had never before acted on any information supplied by him.
- [31] Nevertheless, his information is consistent with a PRIME report that Phil Aslin was a passenger in a vehicle driven by Corey Perkins on April 16, 2014.
- [32] While the information supplied by Source D is entitled to very little weight, it need not be discounted in its entirety, but rather can properly be considered as one small and relatively insignificant part of the overall constellation of circumstances. I say this bearing in mind that the evidence is not to be evaluated on a piecemeal basis.
- [34] The judge considered the circumstantial evidence and concluded it met the reasonable suspicion standard (para. 39).

February 7, 2018 1st Ruling re Production Order

- [35] Another voir dire ruling was made on February 7, 2018, indexed at 2018 BCSC 307 (the "1st Ruling re Production Order"). This concerned a production order granted on December 10, 2014, by a justice of the peace (the "Production Order"), requiring the production of information by a storage company. The information sought concerned video, customer information, contracts and pass codes relating to a specific storage locker.
- [36] The Production Order had been granted on the basis of an ITO provided by Cst. Davies, dated December 10, 2014. That ITO built on the earlier ITO provided by Cst. Davies that had been used to support the Tracking Warrant.
- [37] The judge recognized and stated that the task before him was different than the task of reviewing the Tracking Warrant. Whereas the latter was subject to the "reasonable suspicion" standard, the present task was subject to the "reasonable grounds to believe standard":

REASONABLE GROUNDS STANDARD

- [12] Unlike a tracking warrant, where the application materials must satisfy a reasonable suspicion standard, the legislation in relation to production orders and general warrants sets the bar higher and requires that the prerequisites be established on the standard of reasonable grounds to believe.
- [13] Reasonable grounds are something more than suspicion, but less than the civil standard of a balance of probabilities, and less than a prima facie case. It is a practical, non-technical, and common sense standard that requires a consideration of the totality of the circumstances: *R. v. Debot* (1989), 52 C.C.C. (3d) 193 at p. 213 (S.C.C.); *R. v. Whitaker*, at paras. 39-42; *R. v. Lam*, 2002 BCCA 99 at paras. 7-8; and *R. v. Liu*, 2014 BCCA 166 at paras. 33-39.
- [14] In reviewing the application materials submitted for a production order or a warrant, the grounds must be assessed from the standpoint of a reasonable person standing in the shoes of the police officer, and in this respect the experience of the affiant is relevant: *R. v. Tran*, 2007 BCCA 491 at paras. 12-13.
- [15] Where the affiant relies on information obtained from a confidential informer, the court must assess the informer's reliability, including past performance, motive, and whether the information was compelling, credible, and corroborated, although weakness in one area may be compensated for by strengths in the others: *R. v. Debot* at p. 215.
- [16] Reasonable grounds can be based in part on reputation evidence, including the reputation of the suspect and the reputation of people with whom the suspect associates, although the weight to be given to such evidence will depend in part on its reliability: *R. v. Debot* at pp. 215-216.

- [38] After reviewing the law, the judge considered the evidence in the ITO, as redacted, and whether it provided a basis on which the justice could have found there were reasonable grounds for Cst. Davies' stated belief that the appellant had committed a drug offence and that production of the data relating to the storage locker would afford evidence respecting the commission of that offence.
- [39] The judge noted that in his Ruling re Tracking Warrant he found that the Tracking Warrant was properly issued, but the standard for a tracking warrant was only reasonable suspicion, not reasonable belief. In the 1st Ruling re Production Order, the judge noted that the earlier ITO would not have met the standard of reasonable grounds to believe (para. 26).
- [40] The judge thus moved on to consider whether the additional information in Cst. Davies' December 10, 2014 ITO was sufficient to raise the level of confidence from that of reasonable suspicion to reasonable grounds to believe the appellant committed a drug offence.
- [41] The judge found that there were four categories of additional evidence:
1. Additional evidence that the appellant regularly drove the blue Mercedes, including on dates in November and December 2014, all of which strengthened the inference that it was the appellant in the Mercedes when it was seen meeting in suspicious circumstances with Himpfen's Yukon on October 21, 2014 (para. 30);
 2. Information that even after his arrest, Himpfen continued to be involved with activities consistent with drug activities. That strengthened the inference that there may have been a drug transaction between Himpfen and the appellant when Himpfen's vehicle and the Mercedes were tracked in close proximity to each other near a rural farm (para. 31);
 3. Two further occasions when the appellant was the subject of surveillance and was seen driving his Mercedes to brief meetings with persons in circumstances consistent with drug activities. In one meeting in a parking lot, a person entered the Mercedes, left after one minute and drove away. In another meeting in a different parking lot, the appellant's Mercedes was parked adjacent to a vehicle; the appellant entered the other vehicle, and in under two minutes left the other vehicle and drove away. The driver of the other vehicle was someone with a record for possession for the purpose of trafficking; and
 4. New evidence from a confidential informant, described as Source E.
- [42] The earlier ITO had not referred to Source E. The new ITO stated that: Source E had been providing information since 2014; the information he provided resulted in one tracking warrant and two CBSA search warrants in which controlled substances were located and seized; Source E was motivated by money and consideration of current charges and was awaiting disposition on something; and the information he provided was based on personal knowledge.

- [43] The judge observed that the paragraph of the ITO setting out the information provided by Source E was heavily redacted, leaving it "impossible to tell" if the information was "very significant or inconsequential". The judge noted:
- [37] On this review, however, almost the entirety of paragraph 43 has been redacted. What is left unredacted is just parts of clause (f), clause (g), and clause (i). Clause (f) speaks of Source E identifying a booking photo of Corey Perkins as, and then there is a redaction. Clause (g) says that Source E described, and then there is a redaction, followed by the words, "as white and skinny with a long skinny face and had a tattoo on the top of his hand", after which Cst. Davies added the comment that Cst. Toews observed a tattoo on the top of Perkins' hand. Clause (i) states that Source E picked up cocaine, and then there is a redaction, followed by the words "directly from" followed by another redaction, and then the comment of Cst. Davies that Perkins has a criminal record for drug trafficking.
- [38] Depending on what is in those portions that have been redacted, this information from Source E could be very significant or it could be completely inconsequential. In its current redacted form, it is impossible to tell, and it would be wrong to speculate.
- [Emphasis added.]
- [44] Because of the redactions, the judge concluded that he could not place any weight on information provided by Source E (para. 39).
- [45] The judge found that the other additional information had provided a stronger basis for believing that the appellant was involved in a drug offence than what was provided in the earlier ITO (para. 40). But, while the case was "very close to the line", he concluded that the "reasonable grounds for belief standard has not been met on the basis of the December 10, 2014 ITO as currently redacted" (para. 42; emphasis added). The judge held that "on the basis of the redacted ITO, there were not grounds upon which the justice could have properly issued the production order" (para. 43; emphasis added).

February 8, 2018 2nd Ruling re Production Order

- [46] Following the judge's 1st Ruling re Production Order, the Crown immediately applied to have the court consider a partially unredacted version of the ITO. The judge approved a judicial summary of this additional information, which was provided to the appellant.
- [47] After considering the additional information, the judge issued a second ruling with respect to the production order on February 8, 2018, indexed at 2018 BCSC 308 (the "2nd Ruling re Production Order").

- [48] As explained in the 2nd Ruling re Production Order, the judge was provided with a new page of the ITO, revealing to him some of the information that was previously redacted (although other redactions remained). The judge approved a judicial summary of the new material that he was shown, and that summary was provided to the appellant. The judge explained the nature of the new information:
- [5] With the new information that was not before me at the time of my ruling on February 7, 2018, 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].
- [6] 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 he 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 he picked up cocaine [redacted] directly from that person.
- [49] The judge noted two arguments advanced by the appellant.
- [50] One argument was that the appellant did not know the specific name that Source E used, which would help him in knowing whether Source E was mistaking him for someone else. The Crown position was that revealing the actual name would compromise informant privilege.
- [51] The second argument advanced by the appellant was that the new information did not add anything significant to what was known before. In particular, the appellant noted that the information in (i) above, which states that Source E picked up cocaine from the appellant, was undated. Since it was known from information in the earlier ITO that the appellant had a previous conviction for a drug offence in 2009, it was possible that Source E was referring to the transaction for which the appellant had previously been convicted.
- [52] The judge considered these arguments but noted that the issue was not whether the new information on its own was sufficient, but whether "the entire constellation of information is sufficient to provide reasonable grounds for belief" (para. 11).

- [53] The judge found that the additional information, along with the earlier information from the December 12, 2014 ITO, did provide reasonable grounds for Cst. Davies' belief that the appellant was involved in a drug offence (para. 29).
- [54] The judge went on to consider the second requirement for obtaining a warrant: whether the material provided reasonable grounds to believe that the production order would afford evidence of the offence. He concluded that it did. The appellant does not take issue with this aspect of the judge's analysis.

February 8, 2018 1st Ruling re General Warrant

- [55] The judge next considered an application by the appellant for a declaration that a general warrant to search the storage locker (the "General Warrant") should not have been granted. This was the same storage locker that was the subject of the Production Order. The General Warrant allowed access to the storage locker, as well as examining, photographing and taking samples of the contents.
- [56] On execution of the General Warrant, numerous firearms were found in the storage locker, as well as ammunition and relatively small quantities of drugs.
- [57] The judge's first ruling on this was on February 8, 2018, in reasons indexed as 2018 BCSC 309 ("1st Ruling re General Warrant"). The basis for the General Warrant was an ITO of Cst. Davies affirmed December 12, 2014, the majority of which was identical to the December 10, 2014 ITO for the Production Order, including the redactions as to the information provided by Source E.
- [58] The judge concluded, for substantially the same reasons as in the 1st Ruling re Production Order, that on the basis of the redacted ITO he could "place no meaningful interpretation of the evidence from Source E". Again, the judge held that "although the case is very close to the line", the standard had not been met on the issue of whether there were reasonable grounds for Cst. Davies' belief that the appellant had committed a drug offence. As such, the General Warrant could not be sustained (para. 3).

February 9, 2018 2nd Ruling re General Warrant

- [59] The Crown then followed the same procedure as with the Production Order, as outlined in step six of Garofoli. A partially unredacted version of the ITO was produced to the judge, and a judicial summary of the newly produced material was provided to the appellant. The judge then made a second ruling regarding the General Warrant for the storage locker, indexed at 2018 BCSC 310 ("2nd Ruling re General Warrant").

- [60] The judge considered similar arguments advanced by the defence as had been advanced in the 2nd Ruling re Production Order, to the effect that: the additional information was insufficient and not material because the appellant did not know the name used by Source E, hindering his ability to know whether the source was mistaken; and since the previous information already disclosed that the appellant had a criminal record from 2009, that conviction might have been the drug transaction that Source E was referring to.
- [61] Applying similar albeit somewhat expanded reasoning as he had in respect of the 2nd Ruling re Production Order, the judge concluded that the additional information, together with the other material from the December 12, 2014 ITO, was sufficient to provide reasonable grounds for Cst. Davies' belief that the appellant was involved in a drug offence of trafficking or possession for the purpose of trafficking (para. 29).
- [62] The judge went on to consider the question of whether there were reasonable grounds for belief that information concerning the offences would be obtained by way of the General Warrant. The judge reviewed the surveillance evidence in more detail, linking the appellant's movements to the storage facility and linking the movements from the storage facility to drug trafficking, and answered this question in the affirmative, upholding the General Warrant. This aspect of the judge's reasoning is not at issue on appeal.

February 16, 2018 Ruling re CDSA Warrants

- [63] The judge was subsequently required to consider the validity of four search warrants issued pursuant to the CDSA (the "CDSA Warrants"). The judge's ruling in this regard was on February 16, 2018, and is indexed at 2018 BCSC 312 ("Ruling re CDSA Warrants").
- [64] The warrants were to search, respectively: the storage locker; the residence of the appellant; the blue Mercedes; and a barn located on Taylor Road in Abbotsford.
- [65] A single ITO was sworn by Cst. Davies on December 15, 2014 in respect of the CDSA Warrants.
- [66] While the judge expressly adopted his previous rulings, he also meticulously set out the standard of review applicable to the issuance of the warrants and the standard required of "reasonable grounds to believe". He carefully reviewed the information in the ITO that pre-existed the information that came from Source E. Rather than splitting the matter into two separate hearings, at this voir dire hearing the Crown applied to have the judge consider a partially unredacted version of Source E's evidence, in accordance with step 6 of the Garofoli procedure.
- [67] The same information was provided to the judge and the same judicial summary was provided to the appellant of Source E's evidence as was the case in the 2nd Ruling re Production Order and 2nd Ruling re General Warrant.

- [68] Similar arguments were advanced by the defence as to the insignificance of the evidence from Source E. The judge reached similar conclusions as he did in the 2nd Ruling re Production Order and 2nd Ruling re General Warrant, namely, that the newly redacted information, together with the "entire constellation of evidence from the ITO", was sufficient to establish reasonable grounds to believe that the appellant was involved in drug trafficking or possession for the purpose of drug trafficking (para. 54).
- [69] The judge next turned to the question of whether there were reasonable grounds to believe that any drugs or drug-related items would be found in the four places to be searched pursuant to the CDSA Warrants. The judge answered this question in the affirmative with respect to three of four places, but in the negative with respect to drugs at the private residence. A s. 24(2) Charter application then followed with respect to the items found at the residence, with the judge ruling the evidence admissible: 2018 BCSC 395 at para. 31. These aspects of the judge's analysis are not in issue on appeal.

Trial Judgment

- [70] At trial, the Crown relied on surveillance evidence, evidence obtained by search warrants, a police interview of the appellant after his arrest, and admissions. The combined evidence was sufficient to persuade the judge beyond a reasonable doubt of the appellant's guilt.
- [71] The judge imposed a global sentence of eight years and 10 months' imprisonment, after taking into account a credit of 38 months served in pre-trial custody.

Appellant's Position on Appeal

- [72] The appellant submits that the issue on appeal is very narrow. As he puts it: was there any material change in the unredacted information from Source E to justify a reversal of the judge's original rulings?
- [73] The appellant argues that the information from Source E that was unredacted was immaterial and could not have changed what was previously insufficient evidence to support reasonable grounds to believe the offences had been committed. I have grouped the appellant's arguments about the insufficiency of the new evidence into the following three points:
1. Significant parts of Source E's evidence remained redacted and there were gaps and a lack of detail in Source E's evidence, all of which affected the reliability and relevance of his evidence;
 2. The defence had made a "virtual concession" that the person Source E was referring to by name was the same person seen in the photograph, so nothing new was established by confirming that by way of the unredacted information; and

3. The judge's reasoning after receiving the additional unredacted information from Source E was inconsistent with how he had previously treated evidence from other informants.

[74] The Crown disagrees with each of the three points.

Analysis

[75] I will address the applicant's three challenges to the sufficiency of Source E's evidence in turn.

Argument that Source E's Evidence Remained Immaterial

- [76] The appellant suggests that Source E's redacted evidence, even after it was revealed he was referring to the same named person identified as the appellant, was so undetailed and vague as to not be worthy of any weight.
- [77] The appellant argues that the evidence that Source E "picked up cocaine [redacted] from the person he identified in the booking photo" as "[name]" is very vague and problematic for several reasons.
- [78] First, the date of this transaction is unknown. Since earlier versions of the ITO revealed that the appellant had a 2009 drug offence conviction in Alberta, the information could have been referring to this old transaction. The appellant submits that lack of any date or even a range of time in proximity to the offences being investigated is highly problematic.
- [79] Second, the police showed Source E a booking photo. The appellant says that showing the booking photo could have been prejudicial and influenced the identification of the appellant. The appellant suggests the police should have used a more recent surveillance photo. Further, by not revealing the actual name used by Source E to describe the appellant, it was difficult for the appellant to challenge whether Source E was referring to the 2009 offence.
- [80] Third, the appellant questions the meaning of the redaction after the word "cocaine". The appellant suggests it opens the possibility that it was not cocaine at all that was involved in the transaction between Source E and the person identified as the appellant, but something else, such as scale, or buffer, or pipes.
- [81] I accept that the judge could have found these issues to be problematic if Source E's evidence was the only evidence being relied upon by the police investigator in obtaining the warrant. However, it was not the only evidence. There was an abundance of surveillance evidence observing the appellant, and someone in his blue Mercedes, engaging in activity that created a high level of suspicion it was drug trafficking. There was other informant evidence suggesting someone named "Corey" (the appellant's first name) was supplying drugs, but that informant evidence did not visually identify the appellant.

- [82] Source E's evidence was reliable because it was consistent with the pre-existing large body of circumstantial evidence suggesting that the appellant was involved in drug trafficking. The fact that Source E could visually identify the appellant was credible. This visual identification was not just from a booking photo, but by way of physical description which included a tattoo on the top of the appellant's hand. The hand tattoo was corroborated by a police officer's evidence. Source E's evidence that he "picked up cocaine [redacted]" directly from the person identified as the appellant was highly significant. I accept that the missing redacted word is curious, but I do not find that it sufficiently diminishes the inference that Source E purchased cocaine or something related to the cocaine trade from the appellant.
- [83] The judge acknowledged the argument that the cocaine transaction could have been connected to the 2009 drug offence, but he was not persuaded that was a reasonable inference.
- [84] The appellant raises an issue with the fact that in his later sets of reasons, the judge added the explanation that there was no evidence that the 2009 offence had to do with the appellant trafficking in cocaine (see for example para. 23 of 2nd Ruling re General Warrant and para. 51 of the Ruling re CDSA Warrants). The judge did not mention this rationale in his 2nd Ruling re the Production Order. I do not see anything significant in this amplification of the judge's reasons. The judge considered the appellant's argument regarding the date of the cocaine transaction in all of his rulings after production of Source E's partially unredacted information and did not find it persuasive. The appellant raised this argument on each occasion (as he was entitled to do, of course), and so the judge dealt with it again as well.
- [85] Further, the appellant's criticism seems to imply that the judge ought to have ordered further disclosure of Source E's evidence. However, as the Crown points out, that criticism is fully answered by the fact that the defence never brought an application for further disclosure.
- [86] It is clear that the appellant's criticisms of the judge's treatment of missing details in Source E's evidence does not raise an error of law, misapprehension of evidence, or a failure to consider relevant evidence. Rather, the appellant's real criticism is with the weight the judge gave to evidence of the confidential informant Source E. I see the judge's weighing of the evidence as entirely reasonable, and it does not provide any basis for appellate interference.

Argument that There Had Been a Prior Concession

- [87] The appellant argues that the judge's treatment of Source E's partially unredacted evidence as significant made no sense because the significant point had virtually been conceded even before the new disclosure. Specifically, the appellant argues the defence had virtually conceded that the person identified by Source E as the appellant was the same person referred to elsewhere in Source E's evidence, including as the person involved in the "cocaine [redacted]" transaction.

[88] There are two problems with this position. First, the record is far from clear that this was "virtually conceded". In support of the proposition that defence counsel virtually conceded this point, the appellant points to a single extract from the transcript of the hearing:

"you have E saying, "the skinny guy, long face, tattoos on hand. Yeah that's the guy you showed me in the booking photo. I picked up cocaine," -- and I'm adding to that because we more or less have inferred that that's what is meant.

[89] With respect, I do not think counsel stating that he has "more or less" inferred what is the content of a redaction can clearly be seen as a concession.

[90] Second, it was the judge who had to be satisfied that this was the substance of Source E's evidence. The redactions created the possible inference that Source E could have been referring to different people and not only to the appellant. The judge explicitly refused to speculate about the content of the redactions in his 1st Ruling re Production Order and 1st Ruling re General Warrant. Clearly, that was the proper approach.

[91] This means there was nothing inconsistent about the judge then finding the partially unredacted evidence significant when it confirmed that Source E was referring to the appellant throughout. In fact, the judge in his early ruling alluded to the possibility that this information could be "very significant".

[92] I therefore see no merit to the appellant's suggestion that this point had been "virtually conceded".

Argument that There Was an Inconsistency in the Treatment of Informant Evidence

[93] As was set out in the overview of the standard of review above, Debot establishes that when considering an informant's evidence as support for a warrant, some consideration should be given to the question of whether there is any corroboration for it.

[94] The appellant suggests that the judge treated the informant evidence inconsistently as between the earlier reasons, where he found the warrant invalid, and his subsequent reasons, where he found the warrants to be valid.

[95] In my view, there was also nothing inconsistent about the judge's treatment of the information provided by the confidential informants as between the judge's sets of reasons. For example, in his Ruling re Tracking Warrant, the judge noted that Source D's evidence was "entitled to very little weight" but "need not be discounted in its entirety". In his 2nd Ruling re Production Order, the judge described Source D's information as weaker than Source E's information because it left the key connection--the fact that the "Corey" Source D referred to was in fact the appellant--as a matter of inference. The judge consistently found that Source D's information was weak, but worthy of some consideration.

- [96] The judge instructed himself on the principles from Debot. It is clear that in considering the totality of the evidence, he considered the criteria of how compelling Source E's evidence was, whether it was credible, and whether it was corroborated. The judge explicitly noted the weaknesses in Source E's credibility, namely his short time as an informant and the fact that his motivation for informing was financial and consideration of charges he currently faced, before ultimately concluding that some weight could be put on his information.
- [97] Of course it is the very nature of circumstantial evidence that piece-by-piece it can accumulate to meet the necessary standard of proof, which here was the standard of "reasonable grounds to believe" that the offences had been committed. There was a substantial amount of circumstantial evidence set out in the ITOs, some from informants and some from surveillance. Source E's evidence was capable of strengthening, or as the judge described it, "tightening", the inferences of criminal activity that were available from the "entire constellation" of the evidence.
- [98] The judge's approach was consistent with the authorities, as summarized in Whitaker:
- [41] A determination with respect to whether reasonable grounds exist requires a consideration of the "totality of the circumstances": *R. v. Bracchi*, 2005 BCCA 461, 201 C.C.C. (3d) 35 at para. 20; *Re Church of Scientology & The Queen* (No. 6), (1987), 31 C.C.C. (3d) 449 (Ont. C.A.) at 502. This means that, "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 of the evidence together": *R. v. Lam*, 2002 BCCA 99, 172 B.C.A.C. 161 at para. 10.
- [42] Further, the assessment of the facts relied upon to establish reasonable grounds is made on a practical, non-technical, and common sense basis: *R. v. Sanchez*, (1994), 93 C.C.C. (3d) 357 (Ont.Ct.)(G.D.)) at 367. As Mr. Justice Cumming observed in *R. v. Charlton*, (1992), 15 B.C.A.C. 272, the person deciding whether the reasonable grounds standard has been met is entitled to "put two and two together": para. 34.
- [99] I do not find anything inconsistent in the judge's approach to informant evidence. It was within the reviewing judge's purview to give weight to Source E's newly unredacted evidence and to conclude that it, together with the whole of the evidence set out in the relevant ITOs, was sufficient to support the conclusion that there were reasonable grounds to believe that the appellant had committed the offences of drug trafficking or possession of drugs for the purpose of trafficking.

Conclusion

[100] For the reasons given, I would dismiss the appeal from conviction.

"The Honourable Madam Justice Griffin"

I AGREE:

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Mr. Justice Voith"

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