

CANADA / JUDGMENT

R. v. Prins

2016 BCSC 2239

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 2239 R. v. Prins IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Prins, 2016 BCSC 2239 Date: 20161130 Docket: X077157 Registry: New Westminster Regina v. Thomas Bert Prins Before: The Honourable Mr. Justice Ball Reasons for Judgment - Admissibility of Evidence Counsel for Crown: W. Sayson, Q.C. B. Kielman Counsel for Accused: J. Banks Place and Date of Trial/Hearing: New Westminster, B.C. October 24 - 27, 2016 Place and Date of Ruling given to Parties with Reasons to follow: New Westminster, B.C. November 25, 2016 Place and Date of Judgment: New Westminster, B.C. November 30, 2016 I. Introduction

- [1] These are the reasons for the conclusions I stated on November 25, 2016. These are reasons on the voir dire held to determine the admissibility at trial of evidence in support of the Indictment naming Thomas Bert Prins, which was gained through a Mr. Big investigation carried out by members of the RCMP between October 14 and December 6, 2012.
- [2] Following the investigation, the accused was charged with seven offences as follows: Count 1 Thomas Bert Prins on the 28th day of May, 2012, at West Vancouver, Province of British Columbia, did, using a firearm, to wit: a Norinco Model 541 handgun, rob Eric Chan of money, contrary to Section 344(1) of the Criminal Code. Count 2 Thomas Bert Prins, on the 28th day of May, 2012, at West Vancouver, in the Province of British Columbia, with intent to commit an indictable offence, did have his face masked, contrary to Section 351(2) of the Criminal Code. Count 3 Thomas Bert Prins, between the 29th day of May, 2012 and 31st day of May, 2012, inclusive, at Squamish, in the Province of British Columbia, did break and enter a place, Shell Gas Station, and commit an indictable offence therein, contrary to Section 348(1) of the Criminal Code. Count 4 Thomas Bert Prins, on the 7th day of June, 2012, at Surrey, Province of British Columbia, did, using a firearm, to wit: a Norinco Model 541 handgun, rob Soonwoo Do of his motor vehicle, wallet, keys, and cellular telephone, contrary to Section 344(1)(a.1) of the Criminal Code. Count 5 Thomas Bert Prins, on the 7th day of June, 2012, at Surrey, in the Province of British Columbia, with intent to commit an indictable offence, did have his face masked, contrary to Section 351(2) of the Criminal Code. Count 6 Thomas Bert Prins, between the 28th day of May, 2012, and the 6th day of December, 2012, inclusive, at or near Surrey, West Vancouver, Squamish, and Vancouver, in the Province of British Columbia, did possess a firearm, a Norinco Model 541 handgun, while not being the holder of a licence under which he may possess the firearm and a

registration certificate for the firearm, contrary to Section 91(1) of the Criminal Code. Count 7 Thomas Bert Prins, on the 2nd day of November, 2012, at or near Surrey and Whistler, in the Province of British Columbia, did knowingly utter a threat to K., to cause death or bodily harm to S.W., contrary to Section 264.1(1) of the Criminal Code.

- [3] The principal admission made in this case by the accused was telling undercover officers about a handgun and then leading the undercover officers to the specific location of a handgun buried in the grounds of Stanley Park in Vancouver on December 6, 2012. The Crown will contend at trial that the handgun was used by this accused to commit offences set forth in Counts 1, 4, and 6, which refer to either armed robbery or possession of the handgun.
- [4] The admission or confession by Mr. Prins to Mr. Big and the associated evidence is to be determined under the regime set out by the Supreme Court of Canada in *R. v. Hart*, 2014 SCC 52. Since *Hart*, the Supreme Court of Canada has decided *R. v. Mack*, 2014 SCC 58 which provides additional guidance regarding Mr. Big confessions particularly in terms of jury instructions.
- [5] The Mr. Big technique has been widely used in Canada to investigate serious crimes, often homicides, which remain unsolved "cold cases". It is often the case that evidence against the accused which is obtained in a Mr. Big investigation includes at least one confession and other evidence that may be considered evidence of bad character. Evidence of an accused's bad character that would otherwise be inadmissible at trial arises from the accused's participation in an undercover operation during which the accused is enlisted to join a fictitious criminal organization and take part in staged scenarios (often involving increased criminality). This culminates in the target being interviewed by the boss of a fictitious criminal organization known as the "Mr. Big". That boss is an undercover police officer.
- [6] The purpose of the interview with the fictitious crime boss is to determine the target's suitability to participate in the affairs of the fictitious criminal organization or a particular operation of that organization. All of the members of the fictitious criminal organization are undercover police officers. In the interview with the fictitious crime boss, the target typically confesses to the commission of the offence under investigation to demonstrate that he or she is capable of carrying out work that involves violence and that his or her past potential problems with the police are no longer a concern that will draw "heat", meaning police attention to the organization.
- [7] The fictitious crime boss may offer assistance to the target in relation to causing other criminal problems to disappear by changing or removing evidence through illicit contacts with the police or others in the criminal justice system. However, the target is required to produce details of the offence being investigated to obtain assistance from the fictitious crime boss.

- [8] In most cases, as noted below, the Mr. Big operation starts with a planned encounter between the target of the investigation and the primary undercover officer. This encounter is called "the Bump". Subsequent scenarios are designed to create contact between the accused as the target and the primary undercover officer with other undercover police officers fulfilling secondary roles or making "cameo" appearances. The scenarios in the Mr. Big operation are planned and staged and often include travel and other opportunities when the target and the primary undercover officer are together allowing for bonding and conversation between the two of them. The fictitious criminal organization pays for meals, drinks, and other sundries, designed to increase the target's bond with the primary undercover officer and with the fictitious criminal organization.
- [9] Scenarios often involve the target picking up and delivering packages which may contain "contraband" and other criminal activities which may or may not involve activities such as threatening, extortion, or other crimes where the apparent victims are also undercover police officers. The target is paid for services rendered to the organization as the organization continues to hold out promise of future financial remuneration.
- [10] The primary undercover officer continues to stress the themes of loyalty, trust, and honesty within the organization in conversations with the target. The target is repeatedly advised that he or she may disengage from the organization at any time without negative consequences. Another ongoing theme is that the organization looks after its members and those members care for each other. The members of the fictitious criminal organization may appear well-paid, have significant amounts of cash, and may discuss or display other signs of affluence.
- [11] The Mr. Big operation conducted against Mr. Prins was such an operation.
- [12] An undercover police operation named "Project E-Prins" lasted several months in which Mr. Prins was the target. The Project E-Prins included scenarios conducted by undercover officers in BC and was designed to cause the target to believe that he might become involved in a criminal organization and needed to be interviewed by the boss thereof to participate in further activities of the criminal enterprise. Some conversations about the various offences with which Mr. Prins is charged took place during these scenarios. It is the Crown's position that Mr. Prins made a number of incriminating comments to the primary undercover officer prior to the confession concerning the location of the handgun that foreshadowed his confessed involvement in the armed offences under investigation.
- [13] During this voir dire, the court has had the benefit of very able counsel with strong advocacy skills and clear final submissions including both oral and detailed written submissions. II. The Position of the Crown
- [14] The Crown submits that Mr. Prins made a number of inculpatory statements and showed police where a handgun was buried in relation to various offences charged in the Indictment.

- [15] The Crown relies on the Mr. Big confession to prove beyond a reasonable doubt the possession by Mr. Prins of the handgun and its use during several offences, thus displaying the actus reus in relation to the offences involved. The Crown also relies on the testimony of S.W. and his recitation of statements made by the accused to S.W. concerning the offences charged. There is other evidence in the form of surveillance and security videos which the Crown says supports its case. The Crown also submits that the other evidence supports the mens rea of the offences charged.
- [16] The Crown submits that the burden upon the Crown to satisfy the court that the probative value of the Mr. Big evidence significantly outweighs its prejudicial effect has been met and that the evidence obtained ought to be admitted. The Crown submits that the probative value of the Mr. Big evidence it wishes to place in evidence is strong because of the detailed nature of the accused's confession to Mr. Big accompanied by various indicia of reliability arising from other materials.
- [17] The Crown asserts there was no police misconduct that compromised trial fairness. III. Position of the Defence
- [18] The defence accepted as correct the explanation of applicable law submitted by the Crown
- [19] The position of the defence is that the Crown has not met the burden upon it to prove on the balance of probabilities that the Mr. Big evidence ought to be admitted because of the vulnerabilities of the accused, the inducements offered to him in the undercover operation, and the intense level of fear which the accused submits affected his functional abilities.
- [20] During submissions, defence counsel stressed that during the interview conducted by police while the accused was initially in custody and when Mr. Prins read a newspaper article from a Squamish newspaper, Mr. Prins acquired all of the details of the offences charged, and repeated those details to undercover officers during the course of the Mr. Big scenarios. In other words, the defence submits that the statements made by Mr. Prins merely repeated what he had been told by authorities and what he had learned from the media, and did not reveal any information learned first-hand from being involved in any crime.
- [21] The defence submits that the overall effect of the Mr. Big operation was of such force that it overcame the will of this accused. As such, the defence submits the average well-informed Canadian would be truly shocked at the lengths to which the police went through to lure Mr. Prins to want to participate in this fictional criminal organization and thereby orchestrate his confession. Given the nature of the Mr. Big operation, the defence submits that the operation constitutes an abuse of process such that the evidence so obtained ought to be excluded from the evidence in this case. IV. Legal Authorities
- [22] Counsel provided the court with a large number of authorities, all of which have been reviewed in the preparation of these reasons. Those authorities are listed in Appendix "A" hereto. V. Overview

[23] In these reasons I will proceed in the following manner:

1. The legal framework that determines the admissibility of Mr. Big evidence and confessions that arises from the decision of the Supreme Court of Canada in Hart and various following authorities.
2. I will set out aspects of the evidence that do not involve the Mr. Big investigation but are nonetheless important to assessing the Mr. Big evidence in this case.
3. A summary of aspects of evidence from the RCMP about Mr. Big operations in general will be reviewed briefly. This evidence will include how the Mr. Big investigation against Mr. Prins was conceived and how it was conducted.
4. An overview of the Mr. Big investigation conducted by undercover officers in Project E-Prins in relation to Mr. Prins will be provided and I will comment on certain aspects of it.
5. I will set out the details of Mr. Prins's inculpatory statements to the primary undercover officer and to the crime boss and the production of the firearm in Stanley Park.
6. The background of Mr. Prins including his alleged vulnerability as the target of a Mr. Big investigation arising from his personality and "fear" will be described and commented on.
7. This judgment will conclude by setting out an analysis and findings regarding the admissibility of Mr. Big evidence based on the Hart test dealing first with the probative value and prejudicial effect and then with abusive process. Although Mr. Justice Moldaver in Hart suggests the trial judge may wish to commence their analysis with the issue of abuse of process there is no advantage to doing so in the present case. VI. The Legal Test for the Admissibility of Mr. Big Evidence

[24] In the case of Hart, the Supreme Court of Canada created a new framework for assessing the admissibility of statements made during undercover operations under the moniker "Mr. Big". Mr. Big operations can become abusive and produce confessions which are unreliable and prejudicial. The framework is designed to protect accused persons and the justice system as a whole from these dangers. These operations are not necessarily abusive and are capable of obtaining evidence in serious cases which have become "cold" or not solvable (Hart at para. 83). The first prong of the new framework features the creation of a common-law rule of evidence whereby statements made to police during a Mr. Big operation are presumptively inadmissible (Hart at para. 85). That presumption may be overcome where it is established on a balance of probabilities that the probative value of the confession outweighs its prejudicial effect.

[25] The second prong of the approach is a "more robust conception" of the traditional abuse of process doctrine to "carefully scrutinize the conduct of police" (Hart at paras. 11, 84). The onus is on the defence to establish that there is an abuse of process on a balance of probabilities (Hart at paras. 89, 113).

- [26] This approach recognizes the danger of unreliable confessions, the prejudicial effect of Mr. Big confessions, and the risk of police misconduct (R. v. Balbar, 2014 BCSC 2285 at para. 28).
- [27] Three subsequent decisions in British Columbia have considered the admissibility of statements made in Mr. Big operations (Balbar, R. v. Streiling, 2015 BCSC 597, and R. v. Hewitt, 2015 BCSC 1836).
- [28] In addition the Court of Appeal has decided on Mr. Big confessions in R. v. West, 2015 BCCA 379. The subsequent Supreme Court of Canada case Mack is a companion case to Hart. In all these cases the evidence of the statements given by the accused in a Mr. Big operation were admitted into evidence. A. Assessing Probative Value
- [29] The first prong requires a trial judge to weigh the probative value of evidence obtained during a Mr. Big operation against its prejudicial effect to determine threshold admissibility only but not the ultimate weight to be given to that evidence. At this stage of the proceeding the court is not obliged to determine if the confession is true (Streiling at paras. 26, 145). Rather this reliability assessment is analogous to the threshold reliability under the principled approach to hearsay (Hart at para. 100).
- [30] The key consideration in determining probative value is whether a confession is reliable (Hart at para. 99, Balbar at para. 32). The court, in order to consider reliability of a confession, must look at all the circumstances under which the confession to "Mr. Big" was made and whether it is confirmed by other evidence apart from the confession. A non-exhaustive list of factors to be considered are listed in paragraph 102 of the Hart decision including: the length of the operation, the number of interactions between the police and the accused, the nature of the relationship between undercover officers and the accused, the nature and extent of the inducements offered, the presence of any threats, the conduct of the interrogation itself, and the personality of the accused including his or her age, sophistication and mental health.
- [31] Special note should be taken of the mental health and age of an accused. A confession made in a Mr. Big operation "that comes from a young person or someone suffering from a mental illness or disability will raise greater reliability concerns" (Hart at para. 103).
- [32] Trial judges are charged with examining "all the circumstances relating to and surrounding the making of the confession" in order to assess their impact on the reliability of the confession (Hart at para. 104, Balbar at para. 36). Trial courts are charged by the reasons in Hart at para. 105 to look for "markers of reliability" in the confession itself including but not limited to the level of detail contained in the confession, whether it leads to the discovery of the additional evidence, and whether it identifies any elements of the crime that had not been made public, for example "the nature of the murder weapon", and whether mundane details of the crime were known to the accused which he or she would not likely known had they not committed the crime. As always confirmatory evidence while not a requirement can provide a powerful support of reliability. B. Assessing Prejudicial Effect

- [33] Once probative value of a confession is decided the trial judge must weigh the probative value against the prejudicial effect by considering the moral reasoning prejudice that accompanies the admission or Mr. Big confession (Hart at para. 106). As submitted by Crown, "prejudicial effect flows from the bad character evidence that must be admitted in order to put the operation and the confession in context" (Hart at para. 85).
- [34] As noted in Hart at para. 74 moral prejudice adversely affects: the character of the accused in the eyes of the jury, thereby creating a risk that the jury will reason from the accused's general disposition to the conclusion that he is guilty of the crime charged, or that he is deserving of punishment in any event.
- [35] The Mr. Big context involves the presence of a criminal organization and may involve the condition of "simulated crimes". Moral prejudice may arise when an individual seeks to join a criminal organization. Again Moldaver J. in Hart at para. 74 notes that "reasoning prejudice" is the distraction of the "jury's focus away from the offence charged, toward the accused's extraneous acts of misconduct".
- [36] This prejudice will increase depending on the length of the Mr. Big operation and any controversy as to whether "a particular event or conversation occurred" (Hart at para. 106).
C. Weighing Probative Value against Prejudicial Effect
- [37] In order to determine the admissibility trial judges must weigh the probative value and the prejudicial effect of the confession and decide whether the Crown has met its burden. Probative value deals with proof of events while the prejudicial effect is concerned with trial fairness (Balbar at para. 42).
- [38] The balancing which takes place between probative value and prejudicial effect may depend on whether the trial is heard before a judge alone or before a judge and a jury. The Supreme Court of Canada in Hart expressed concerns over the impact of potentially prejudicial evidence and the risks of false confessions might have on a jury. R. v. Hales, 2014 BCSC 2285 at para. 41 dealt with the requirement for a trial judge sitting alone to consider the risks of false confessions. Arguably any prejudicial effect is attenuated in a judge-alone trial. This is because a trial judge is familiar with the process of disregarding irrelevant or inadmissible evidence and that process takes place routinely.
- [39] In addition a trial judge is required to provide reasons for the decision so that any moral reasoning prejudice will be obvious in the reasons. But a note of the potential risk is always a matter for consideration. D. Abuse of Process
- [40] The Hart case did not address itself to the question of alleged police misconduct, see paras. 111-112. However, Hart required that the abuse of process doctrine and examination of police be "reinvigorated" rather than creating a new approach (Hart at para. 114).

- [41] The point of this reinvigorated doctrine is to provide the court with remedies where conduct is found to be unacceptable in order to preserve the integrity of the justice system and trial fairness (Balbar at para. 44).
- [42] The court will not forgive police misconduct because a reliable confession is obtained as this would be contrary to established legal authority on the limits of the power of the state to manipulate people for the purpose of obtaining convictions (Balbar at para. 43).
- [43] There must be prejudice to the accused's right to a fair trial or the integrity of the justice system that will be continued throughout the conduct of the trial court or by its outcome. That is the first leg of the test (*R. v. Babos*, 2014 SCC 16). The second leg is there must be no alternative remedy capable of redressing prejudice. Finally, the court must balance the interests of granting a stay to denounce misconduct thereby preserving the integrity of the justice system against the interest of the society having a final decision on the merits (Balbar at para. 49).
- [44] As noted by Justice Arnold-Bailey in *R. v. Langlet*, 2012 BCSC 1621 at para. 103, the Court applied the decision of *R. v. Skinner* (1992), 17 C.R. (4th) 265 at 275 as follows: The difference between the unpalatable and inedible is generally a matter of personal taste. Absent "dirty tricks", the Court should not set themselves up as arbiters of good taste or a preferred methods of investigation. It is unrealistic to demand chivalry from those who must investigate what are often the most heinous offences against blameless victims. The law should not appear to materialize as a revolutionary rabbit from the judicial magician's hat. But the common law and the Charter justly the accused from coercion and endow him with specific rights which he may exercise at the time of arrest or while he is in custody; but the Courts should not be so indulgent as to preserve the accused from himself and his own untrammelled tongue, and should require realistic justification for suppressing facts from the jury which go to weight rather than to admissibility. [emphasis added from Langlet]
- [45] In Hart Moldaver J. outlined guidelines as follows:
1. The mere presence of inducements is not problematic (para. 115);
 2. Police conduct, including inducements and threats, become problematic when it approximates coercion (para. 115) and in conducting these operations police cannot be permitted to overcome the will of the accused and coerce a confession. The reference to coercion may incorporate some but not all of the factors considered in *R. v. White*, [1999] 2 S.C.R. 417 at paras. 424, 425.
 3. Physical violence or threats of violence are examples of coercive police tactics. A "confession derived from physical violence or threats of violence against an accused will not be admissible - no matter how reliable - because this, quite simply, is something the community will not tolerate" (para 116);

4. Operations that prey on the accused's vulnerabilities such as mental health problems, substance abuse, or youthfulness are highly problematic (para. 117).
- [46] Justice Fitch (as he then was) listed a similar set of factors in *R. v. McDonald*, 2013 BCSC 2344. In the case of *Balbar*, Arnold-Bailey J. at para. 380 set out a list of considerations derived from the *McDonald* decision which are worthy of continuing consideration:
1. The analysis is a case specific inquiry and must take into account all the circumstances;
 2. The nature of the offence being investigated. The Mr. Big technique applied in a case involving crimes of brutality may not shock the sensibilities of the community;
 3. The background of the target as it is known to police, including factors going to his character or disposition, life experience, and particular vulnerabilities arising from such things as age, addiction, and emotional health;
 4. The extent to which the investigation exploited the unusual vulnerabilities of the target;
 5. The extent to which the implementation of the Mr. Big technique was coercive having regard to the length of the investigation and its overall nature or tone;
 6. The target's known or suspected criminal history;
 7. The target's known history of violence (apart from the offence being investigated) including its nature, degree, frequency, and temporal connection to the offence under investigation;
 8. The reaction of the target to scenarios he or she would regard as involving overtly criminal acts before scenarios involving simulated violence were introduced;
 9. The reaction of the target to scenarios incorporating simulated violence;
 10. The nature and extent of the simulated violence utilized in the investigation; and
 11. The reliability of the evidence obtained through this investigative technique.
- VII. Evidence Other than from the Mr. Big Investigation
- A. Evidence from Security Videos at Squamish Gas Station
- [47] With reference to Count 3, there are surveillance videos from the Shell gas station in Squamish, British Columbia taken May 29 and 30, 2012. On May 29, the video shows a man wearing a black balaclava otherwise dressed all in black, attempting to break the glass portion of the front door of the gas station store with a rock or boulder. His efforts to break the glass are unsuccessful and he runs away to the southwest into a wooded area.
- [48] The owner/operator of the store arrived moments later and police followed. The shattered portion of the glass door was replaced the following day.
- [49] Then on the night of May 30, a man dressed identically to the man the night before, also wearing a black balaclava, approached the gas station door carrying a sledgehammer. With the sledgehammer, he punched several holes through the door and eventually the glass

panel folded out of the aluminum frame of the door. The man with the black balaclava entered the store. He inspected the cash desk which is found empty. He attempted to open the cigarette display case which is not openable by him. He then proceeded to take potato chips, soda drinks, and other edibles from the store in at least two trips in and out. Shortly thereafter, an RCMP officer arrives but the man with black balaclava had fled the scene.

- [50] Thereafter the police with the assistance of police service dog "Red" found a black balaclava near the railroad tracks north of the gas station in Squamish. That balaclava was analysed for DNA. A great deal of evidence was called to demonstrate the continuity of the balaclava and samples taken therefrom through the DNA analysis process.
- [51] At this point in the proceedings it appears that there was no problem with the continuity of the balaclava or samples taken from it. The DNA analysis from the mask to a known DNA sample taken subject to a warrant from this accused was matched with a probability of one and 2.9 trillion individuals. B. Evidence from Security Videos at BC Ferry Authority Cash Office in Horseshoe Bay
- [52] With reference to Counts 1 and 2, there are surveillance videos from both the exterior and the interior of the British Columbia Ferry Authority cash office in Horseshoe Bay.
- [53] Eric Chan, a long term ferry worker, testified that he was working as a ticket agent at the Horseshoe Bay Ferry Terminal for BC Ferries on May 28, 2012. Between 9:25 and 9:35pm he had closed his ticket booth and had taken his cash receipts to the cash room. The receipts were deposited in an internal non-accessible vault. While inside the cash room with another BC Ferry Employee, Manjit Thind, they received a message from the ferry terminal control tower that there was a person observed on security cameras prowling outside the cash room. Mr. Chan was directed to go outside the cash room to identify that person who was wandering around. Once outside he was confronted by an individual who was carrying a "gun like object". Mr. Chan attempted to run but fell and injured his knee quite badly. He re-entered the cash room at the direction of the man with the gun. At the time that man was wearing a black balaclava. He was asking for money. Mr. Chan pulled \$20 out of his pocket and handed it to the man. Exhibit 5 contains an accurate recording of what took place in the cash room. Exhibit 8 contains a photograph of Mr. Chan's knees. He testified that he missed a year of work because of the injuries to his knees and continues to be affected by anxiety and stress.
- [54] Manjit Thind also testified. She has been a ticket agent supervisor employed by the British Columbia Ferry Authority for some 20 years. On May 28, 2012, she was closing a shift which ends between 9:30 and 10:00pm. She received a call from another ferry employee in the "traffic control tower" that someone, seen on security video, was prowling outside the cash office. Mr. Chan was instructed to go and determine who that person was. When Ms. Thind next saw Mr. Chan, he returned to the cash room, was slouched over, and his knees were bleeding. He was followed by a man wearing a black balaclava and pointing a gun. The man had a gun in his right hand and a knife was inside his belt by his pants. Ms. Thind described

a black handgun. She described the male with the handgun as a tall Caucasian white male with blue eyes.

- [55] Exhibit 5 is a compact disc which contains various video clips showing among other things a male wearing a black balaclava with a backpack who was seen crouching near the fence line to the northwest of the toll booths in the ferry plaza. He was wearing a beige T-shirt and black dark pants and shoes. He then moved crouching behind a sign and walked quickly across the north side of the toll plaza towards the cash room. Mr. Chan left the cash room on the instructions of other staff to identify the individual prowling and was confronted by the man wearing the balaclava who had run across the toll plaza towards the cash room. Mr. Chan attempted to run away to the east. Near the southeast corner of the cash room building, Mr. Chan stumbled and fell and was then confronted again by the individual wearing a balaclava and carrying a handgun. Mr. Chan was then directed by that individual to enter the cash room where Manjit Thind was present. The man wearing the balaclava and holding the gun asked for the vault to be opened. Ms. Thind told him that was not possible and that the managers and supervisors had gone home for the night. He then made inquiries about the money drop drawer and she told him that she had no access to that drawer. He asked if he could have "their wallets". Ms. Thind told him that she did not have a wallet and Mr. Chan said he had \$20. The man with the balaclava told him to give him the \$20 and the man with the balaclava took \$20 from Mr. Chan. The man with the balaclava and then left the cash room, ran across the toll plaza, jumped over to traffic barricades, and entered a wooded area to the west of the toll plaza. C. Evidence from S.W.
- [56] S.W. is an individual who offered living space to Mr. Prins in Vancouver. It is not necessary to deal with every detail that S.W. related. When Mr. Prins first arrived at S.W.'s suite, Mr. Prins showed S.W. a black backpack which among other things contained a black handgun which had a pistol grip embossed with a circle with a star in the middle of it. According to S.W., Mr. Prins showed him how the gun was taken apart. Mr. Prins told S.W. the gun made in China and after storing the gun in S.W.'s residence for a couple of weeks, Mr. Prins told S.W. he was going to take the gun to Stanley Park and bury it.
- [57] According to S.W., Mr. Prins also stated that he had attempted to rob a gas station in Squamish one night but was unable to gain access. He went back the next night with a heavy hammer and broke in the door. He took food from the gas station. At the time he was wearing a black balaclava. S.W. was also told by Mr. Prins that he tried to rob the ferry terminal in Horseshoe Bay and that he went to the money room wearing a balaclava with a gun in his hand. He had staked out the cash room during the day. In the evening, he saw an employee leave the money room. Then armed with the handgun he told the employee to re-enter the money room. While in the money room, Mr. Prins took \$20 from the ferry worker. The ferry workers knees were injured.
- [58] Later Mr. Prins told S.W. that he carjacked a car in Surrey. It was a Ford automobile. Mr. Prins had told S.W. that Mr. Prins robbed a South Asian man at a golf course in Surrey of money, his car, and a cell phone. S.W. was told that Mr. Prins bargained over the cell phone

and that he would leave it up the road. Mr. Prins told S.W. that he obtained \$70 from the robbery and that he removed an ornament from the automobile which showed a small fenced area with a tree in it which moved on a spring. That ornament was brought to the apartment and was later found in the squat where Mr. Prins was living.

- [59] All of the information about the robbery of the ferry office and Mr. Chan, the attempted break and enter, and the break and enter to the Shell gas station, as well as the robbery of the proprietor of the golf centre in Surrey were provided by Mr. Prins to S.W. well prior to the arrest of Mr. Prins or any interview conducted by the police. VIII. Mr. Big planning and oversight A. Project E-Prins in terms of its planning and oversight
- [60] In June of 2012, Corporal Muntener became aware of the Surrey Golf Centre robbery and that a potential witness, S.W., had made a statement linking that robbery to offences at the B.C. Ferries terminal at Horseshoe Bay and two breaking and entering events at a Squamish gas station with this accused. Corporal Muntener decided in early September to submit for approval an operational plan for a Mr. Big operation involving this accused and the offences listed above.
- [61] The operational plan complete with resource use and expense allocations was sent up the chain of command in the RCMP, where approval was granted to commence the Mr. Big investigation. Approval was also applied for from those responsible for the assignment of undercover resources within the RCMP. That approval was also granted.
- [62] Corporal Muntener sought the assistance of an experienced officer, H., who has been involved in undercover work since 2000. His role as "cover officer" was to design and oversee the conduct of scenarios by undercover officers, in this case K. and L., who were assigned to this investigation. The cover officer is responsible to supervise the undercover officers and regularly relay their reports to investigators as well as up the chain of command for operational scrutiny. The cover officer provides the undercover officers with a scenario sheet which delineates the goal or goals of each scenario. The undercover officers are trained to conduct the scenario in a manner to accomplish those goals. The scenarios planned in the case at bar did not include any aspect of actual or feigned violence nor any threat of violence.
- [63] The goal of the Mr. Big investigation as a major crime investigation technique is, in the environment of a fictitious criminal organization, to conduct an interview between the target and the crime boss where a confession or other inculpatory information is obtained to advance the prosecution of a criminal charge. Aspects of the personality of the target are included in the consideration and planning of the Mr. Big, including in this case the strong educational background of Mr. Prins, the lack of concern about his mental status, or any concern about substance or alcohol abuse.

- [64] The Mr. Big operation is maintained quite separate from other investigations into particular crimes, and as a result the undercover officers know little of the criminal investigations being pursued against the target and are deliberately not informed about those matters. B. Findings regarding the RCMP and the Mr. Big technique
- [65] Each Mr. Big operation resulting in evidence that the Crown seeks to tender at trial starts out with evidence which is presumptively inadmissible. The evidence so obtained must then satisfy the test set out in Hart in terms of the probative value of that evidence outweighing its prejudicial effect. It is trite law that a coerced confession is an inadmissible one and police methods must not constitute an abuse of process.
- [66] This investigative technique has as its primary purpose to gain evidence to mount a prosecution in a case which has otherwise gone "cold". The misrepresentation inherent in displaying an imaginary criminal environment to a target is designed to produce inculpatory evidence, such as a confession. Scenarios may appear to create coercion or may exceed the limits the community will tolerate in terms of the "community shock test".
- [67] If vulnerabilities of an accused are preyed upon, or the level of feigned violence or threatening violence towards the target or others in his or her presence, or scenarios with objectionable content go beyond what community standards will tolerate then the evidence will remain inadmissible because of an abuse of process. As a result the scope of these investigations is limited by the community shock test.
- [68] The Mr. Big technique has been portrayed as a well-planned, well-managed, and adjustable investigative technique that is an important tool in assisting police to solve unsolved crimes, usually homicides. While the vast majority of past Mr. Big operations have been successful in gathering sufficient evidence to send the case to trial, the specter of a false confession that could lead to a wrongful conviction remains alive and to be guarded against on a case by case basis. As evidence from Mr. Big operations is presumptively inadmissible there will be a greater and continuing incentive to the police to give close regard to the nature of the vulnerabilities of the target and to avoid staging scenarios that are excessively violent.
- [69] It appears that police have made efforts to avoid a finding of abusive process by restricting the nature of the activities in scenarios used in this case. As noted by Arnold-Bailey J. in *Balbar*: The specter of a false confession that could lead to a wrongful conviction remains alive and to be guarded against on a case-by-case basis. The fact that this evidence is presumptively inadmissible will provide a greater and continuing incentive to the police to be particularly alert to the nature of the target, in particular to vulnerabilities that the target may present, and to the staging of scenarios that are excessively violent.
- [70] There were a total of 11 interactions, the Bump and 10 scenarios, which culminated in the production of a handgun in Stanley Park. None of the scenarios lasted more than a few hours and none of them could be described as intense. Moving boxes or parking cars at the airport or Skytrain stations are not exciting activities.

- [71] Mr. Prins was treated with respect by the undercover officers and Mr. Prins was never placed in any situation which could be described as dangerous or threatening. The inducements, cash paid for work done, were paid above his normal hourly rates, but globally did not amount to a significant amount of money.
- [72] The final scenario was calm and professional. It was not confrontational or aggressive. The undercover officers persuaded Mr. Prins to provide the location of the handgun.
- [73] Mr. Prins is a well-educated person, highly focused on the failure to gain approval from the RCMP for a business opportunity to sell ammunition. It is puzzling that an individual with a university level business degree would not have sought to reorient his aspirations to a different business opportunity with a commensurate professional income. Poverty was not his long term expectation.
- [74] There was ample evidence including the information given by Mr. Prins to S.W., at a high level of detail, which preceded any police interview of Mr. Prins, the location of the balaclava and the DNA evidence derived therefrom to justify a Mr. Big operation with Mr. Prins as the target.
- [75] In the case at bar, no violence whatsoever formed a part of any of the scenarios which took place. While as noted a violent scenario might render the Mr. Big evidence inadmissible, Hart also provides a roadmap to obtain admissibility and provides guidelines to avoid abuse.
- [76] With the above comments being made, I make the following findings:
1. Procedures that existed in 2012 were followed when Project E-Prins was considered and approved, and implemented by senior RCMP officers;
 2. Given the nature of the evidence, particularly from S.W., there was nothing inappropriate in selecting Mr. Prins as the target for a Mr. Big operation in relation to the offences charged.
 3. The nature of the operation carried out was not unusual in the context of other similar investigations.
 4. Consideration was given to Mr. Prins's unique personality traits. Mr. Prins was a person with a strong educational background having recently received a degree from the business school of a recognized university in British Columbia, at the top of his academic class.
 5. No particular consideration was given to his apparent lack of employment.
 6. Mr. Prins apparently did not have a substance abuse problem involving either alcohol or drugs.

- [77] The E-Prins investigation began on June 7, 2012, when Corporal Muntener was directed that certain offences had been linked by other investigators and he was directed to take over the investigation of all of the offences. On August 25, 2012, the Corporal was advised that Mr. Prins had been arrested and was in custody in the Vancouver lock-up. A cell plant was quickly organized through a cell shot authorization and the first Scenario of the Mr. Big operation, "the Bump", occurred.
- [78] H. became the primary "cover officer". The undercover officers assigned to this operation were K. and L. L. is an RCMP member with over ten years' experience. He has been assigned to a number of undercover investigations.
- [79] In 2012 when Project E-Prins was approved the cover person had considerable latitude in deciding which direction to take the investigation and which scenarios to run. The undercover officers also had considerable latitude in terms of how to play their roles and the level of intensity to bring to those roles. In the case of each scenario, the undercover officer was briefed as to the goal of the scenario and its broad outline. I will not repeat this briefing information for each scenario as it is not necessary to do so in order to rule on this voir dire. B. The "Bump"
- [80] On August 25, 2012, L. was placed in a cell in Surrey B.C. Prior to being placed in the cell, L. signed a one party consent to permit the electronic recording of his conversations with Mr. Prins. L. had previously read a bulletin from K-Division (Alberta) RCMP headquarters concerning Mr. Prins but L. was instructed not to attempt to obtain any factual information from Mr. Prins during the Bump. The two men exchanged names and Mr. Prins gave L. his email address.
- [81] Mr. Prins was placed in the same cell as that occupied by L. During the Bump, Mr. Prins told L. of his negative views on government and paying of taxes. Mr. Prins also expressed support for Aryan and Anti-Semitic views. L. found Mr. Prins to be articulate, and his speech was easy to understand.
- [82] No information about any of the present criminal charges was discussed. C. Scenario One
- [83] In mid-October of 2012, L. sent email messages to Mr. Prins to promote contact with Mr. Prins. There were 29 e-mail exchanges between October 14 to November 8, 2012. The information provided by Mr. Prins included his degree in business, that he worked as a framer for \$11.50 per hour but was also a truck driver. He was raising money to repair his car and he was living in a half-way house in Surrey, B.C. Mr. Prins also sought work from L., but noted that he would not promise special treatment unless he was given special treatment.
- [84] Eventually the two men met in Scenario two. D. Scenario Two

- [85] On October 27, 2012, L. who had signed a one party consent to intercept his communications, met with Mr. Prins in a restaurant in Surrey. This meeting was recorded. The two men spoke and Mr. Prins told L. about his current work demolishing a nursery. Prins had kept and sold items discarded from the nursery to help pay for his board at the half-way house where he was then staying.
- [86] L. told Mr. Prins that not all of the business that L. was involved in was above board, but that any work that L. hired Mr. Prins to do would be legitimate. L. told Mr. Prins that he may have work moving objects from the Lower Mainland to Whistler available for Mr. Prins on or about November 10, 2012. E. Scenario Three
- [87] Scenario three, which took place on October 27, 2002, involved L. and Mr. Prins meeting at a coffee shop and receiving instructions to work with a second undercover officer, K. The two men were instructed to take a van to pick up two dozen boxes of beer and liquor from a storage locker in Surrey and deliver those boxes to a storage locker in Whistler, British Columbia. The liquor was the property of the RCMP and no stolen or contraband items were involved.
- [88] The vehicle used in this scenario (and other scenarios involving the presence of undercover police officers with Mr. Prins) was equipped with both audio and video recording equipment so what was said and done in the vehicle was recorded and presented in evidence. Audio and video one party consents were in place before this scenario commenced. The driving route taken by K. deliberately moved past the Fraser Valley Golf Centre, Horseshoe Bay, and Squamish, each a location of one or more offences in the indictment. K. and Mr. Prins drove together to Whistler and met L. there to obtain keys for a storage locker. The contents of the van were placed into the locker.
- [89] Then the three men drove south in two vehicles to a restaurant on Highway 99 in Squamish where the three men ate lunch. Prior to leaving the restaurant, an extra pizza was purchased for Mr. Prins who had expressed unhappiness over the quality and quantity of the food he was given at the half-way house. L. paid Mr. Prins \$300 cash for his work.
- [90] K. drove Mr. Prins back to Surrey and dropped him off near the half-way house.
- [91] The Crown has submitted that Mr. Prins made a number of inculpatory statements, during the course of Scenario three, which were set out in a chart in the Crown's written submissions (See Crown's written closing submissions, page 19 -27). The chart included a first column with a transcript reference, a second column with a subject reference and a third column which contained a statement of the accused or an exchange between the accused and L. in order to provide context. For the purposes of this voir dire only, without making any final findings concerning credibility or reliability involving Mr. Prins, I accept the Crown's characterization of these statements as inculpatory. Transcript Subject Quote Page 7, line 97 (3A) Weapons Prohibition "Uh I have a weapons prohibition." Page 40, lines 597 - 605 (3A) Fraser Golf Centre Prins - "Oh, I just broke one of my conditions." L. - "What's that?" Prins - "I'm not supposed to be within a 100 metres of that place." L. - "Which place?"

Prins - "Fraser Golf Centre." L. - "What the Golf Centre?" Prins - "Yah." L. - "Oh, we're a 100 metres away from it now." Prins - "It's Fraser Golf. I have no knowledge in any way, shape or form and if anybody asks I got picked up her and I walked this way." Page 41, line 624 (3A) Fraser Golf Centre Prins - "Oh apparently I stole someone's car there." Page 53, line 775 - 778 (3B) S.W. Prins - "Thank you. Uh, the uh yah so I, I jigsawed my way through, the jail thing there, um I was implicated by an individual who I put my trust in and I am happy actually what, what happened because I was on the street for a while." Page 60, line 893 (3B) S.W. Prins - "So I'm very happy about that now and now I'm gonna deal with it." Page 65, lines 957 - 974 (3B) S.W. Prins - "Court order to stay away from him." K. - "Oh yah?" Prins - "Yah, but it's ..." K. - "What?" Prins - "Me (snapping sound)" K. - "Oh you whacked him?" Prins - "No" K. - "Oh" Prins - "Not yet" K. - "Oh not yet?" Prins - "No I'm working' on it?" Prins - "Yah" K. - "Uh" Prins - "See that's why I gotta make sure this is all very " K. - "Well I got, the battery's out man" Prins - "Good, cause they're totally jigsawing me right?" Page 69, lines 1016 - 1018 (3B) Fraser Golf Centre Prins - "And apparently my DNA is all over the car" K. - "What car? His car?" Prins - "The car that was stolen" Page 135, Line 2048 (3B) Firearm Prins - "Uh if you get 7.62 by 25 millimetre, which is the cheapest" Page 142, Line 2146 (3B) Firearm Prins - "And apparently that's what they do when they can't find the gun. See if they found a gun on me then I'd be kaput, right?" Page 147, Line 2221 (3B) S.W. Prins - "Uh yah he has a colostomy bag and I " K. - "Oh does he?" Prins - "Yah, that's pretty shitty." Page 167, lines 2524-2532 (3B) Fraser Golf Centre and stolen car K. - "How did they get your DNA?" Prins - "At least that's what I'm saying" K. - "Huh?" Prins - "At least that's what I'm saying. Well like it fell out of, out, out of my hair while I was in the car supposedly" K. - "Okay so they're making this shit up then" Prins - "That's all I can say" K. - "That's a lot of fuckin' story to fuckin' weave in here" Prins - "Mhm, yah. That's my storey and I'm sticking to it. You know maybe I did it, maybe I didn't" Page 169, lines 2553 - 2570 (3B) Fraser Golf Centre Robbery Prins - "Yah. You know I'm just saying that because like I don't trust anyone anymore and I don't know if this " K. - "What?" Prins - "I fuckin' robbed the place, I, I robbed the guy" K. - "You robbed the, oh, oh you " Prins - "Give me the fuckin' keys" Chuckling K. - "Oh you robbed the guy. I was gonna, I was wonderin' " Prins - "Mask on" K. - "You had a mask on?" Prins - "Oh yah" K. - "Yah?" Prins - "Give me the fuckin' keys" K. - "Good, did he give you money?" Prins - "Uh 70 bucks" K. - "Fuck that's it" Prins - "Yah, He's Korean" Page 171, lines 2589 - 2591 (3B) S.W. Prins - "It'll be dealt with. Not by myself, it an't be. I'd like to get him alive" K. - "Yah" Prins - "Cause he has to feel something for it" Page 173, line 2618 (3B) S.W. Prins - "um the gentleman in question he is the most humanized version of a rat" Page 177, lines 2677 - 2700 (3B) S.W. Prins - "I've thinking about it and all you have to do is tie him down in a bathtub and take the colostomy bag out, cause that's an open hole and just pour battery acid into the tub" K. - "Fuck Jesus. Jesus fuck" Prins - "From the inside out" K. - "Like this thing. Where does this thing come in? Like f-, in the gut?" Prins - "Right here" K. - "Oh fuck. And why's he, why does this guy got that thing?" Prins - "Uh he's got Crone's disease" K. - "Oh. Fuck Jesus Christ. And he shit in the bag? You know where this guy is?" Prins - "Yes" K. - "Ah" Prins - "I stayed there" K. - "Oh okay" Prins - "If he moves and I can't get him before the court date? I'll have to pay someone to follow him home after court and they'll have to deal with it and then I wanna, wanna see

pictures" Prins - "And that's all if get" K. - "Yah" Prins - "that's okay. I, I'm, I'm not gonna get off on the suffering" K. - "No" Prins - "I just want him to feel it" Page 265, lines 4033 - 4047 (3B) K. talking Prins out of harming S.W. Prins - "Put him to the water" K. - "Yah I know but there's ways of doing things " Prins - "Yah and it takes time" K. - "And there's ways of not doing things" Prins - "And money" K. - "Yah, well no, no. Yah, I s-, I understand what you're saying, but uh " Prins - "It's not pretty work, it's gotta be paid for" K. - "That's right, well anybody messes with the company I mean they got, you know? The company covers right? So to speak, you know what's I'm saying?" Prins - "Mutual. Work the same way for you and L." K. - "Yah. Let's think about that before ya just " Prins - "Oh I got lots of time" K. - " just deal with that fuckin' " Prins - "Got until this time next year" Page 406, lines 6143 - 6148 (3B) Robbery Prins - "Yah. And in this case it's too bad for me because they've got me by the uh balls" K. - "Because of the website" Prins - "No because of my possible involvement in a " K. - "Oh, okay" Prins - " armed robbery" Page 408, lines 6165 - 6169 (3B) Evidence against Prins Prins - "They had my balaclava" K. - "Oh fuck. 'Kay where, where is it right now?" Prins - "It's at the jail" K. - Oh shit. So they, okay so they that right?" Prins - "Yah" Page 413, lines 6241 - 6253 (3B) Firearm Prins - "It's hidden it isn't loaded" K. - "'Kay. What is it?" Prins - "Takarev" K. - "A what?" Prins - "Takarev" K. - Is it? Like, like the, the caliber? Or is that , that the fuckin' gun?" Prins - "That's the one" K. - "Oh the actual Russian gun?" Prins - "Yep" K. - "Isn't that a classic? Isn't those, those are classics right?" Prins - "Yep. This one's a Chinese knockoff" K. - "Oh is it?" Prins - "It's okay the, it's still the same gun" Page 419, lines 6329 - 6352 (3B) S.W. K. - "About your issue" Prins - "Mm first of all it has to be a few more months" K. - "Okay" Prins - "So that way it doesn't look like we had any involvement" K. - "'Kay" Prins - "And then two I'd like to see him abducted" K. - "Okay" Prins - "Thrown into the back of a van, someone waiting for him in the back of the van, give him a good smack" K. - "Like this?" Prins - "Yah" Prins - "Give him a good smack and tie him up and then take him to some place where on one is. Far, far away. Take his colostomy bag out, we pour something chemical in there" K. - "Yah?" Prins - "And you just let him soak in it" K. - "Let him cook?" Prins - "Till he's dead" K. - "Yah?" Prins - "I mean if you get off on that kinda thing you can watch him suffer, but it's gonna take hours upon hours" K. - "Yah?" Prins - "So I mean if, it's taking too long then you can accelerate it. But I'd like to see him suffer because it's holding a lot of things back" Page 421, lines 6364 - 6371 S.W. K. - "Do you kn-, do you know where this guy is?" Prins - "Yes, I stayed at his place and as long as he hasn't changed his address he should still be there" K. - "He lives by himself? Does he live by himself?" Prins - "Yah. If he has changed his address and I do get off curfew I'll have to spend a few weeks trying to find him" K. - "Oh, let us do that. Well let me do that" Prins - "You will be compensated, each day" F. Scenario Four

- [92] On November 9, 2012, K. met with Mr. Prins in a coffee shop for the purpose of providing Mr. Prins with a cellular telephone, for restricted use to maintain communication with K. K. also provided Mr. Prins with \$100 cash to pay for minutes of service on the phone, or to pay taxi fare in the event Mr. Prins was requested to take a taxi for work with K. Mr. Prins was also asked if he had a valid B.C. driver's licence, the class of the licence, and any restrictions on the licence. G. Scenario Five

- [93] On November 14, 2012, K. met with Mr. Prins at the same coffee shop. The meeting lasted about 26 minutes. Mr. Prins was instructed to drive a vehicle to Vancouver International Airport and park the vehicle in the weekly parking section.
- [94] Mr. Prins was instructed to leave the keys on top of the rear passenger side tire. Thereafter he was instructed to board the Skytrain back to his residence and then send a text advising of completion of this task to L. He had been told that the vehicle was clean and not carrying contraband. Mr. Prins was paid \$205 for this job in advance of its completion. H. Scenario Six
- [95] L. and Prins met on November 19, 2012, in the afternoon at the same coffee shop. Mr. Prins was again instructed to drop off a vehicle at the Vancouver International Airport. Again he was told that the vehicle was clean and did not contain contraband. He was paid \$200 for this work. Mr. Prins successfully completed this assignment. I. Scenario Seven
- [96] On November 23, 2012, L. and Mr. Prins met at a restaurant in Delta, British Columbia around 10 am. L. paid for Mr. Prins's breakfast and this was an identical scenario to the previous two where Mr. Prins was instructed to drive a rental vehicle to Vancouver International Airport. Again he was told the vehicle was clean and did not contain any contraband. He was paid \$270 to complete this drop off. J. Scenario Eight
- [97] On November 28, 2012, L. met Mr. Prins at around 9 am at the same coffee shop as earlier meetings. L. instructed Mr. Prins to drop off a vehicle at Brentwood Mall in Burnaby. L. instructed Mr. Prins that after he dropped off the vehicle he was to maintain surveillance on the vehicle pending the arrival of another individual who arrived at the vehicle with a backpack which he placed in the trunk of the vehicle and then drove away. Mr. Prins had been directed to report the movement of this third individual who was also an undercover police officer Sgt. H. Again he was instructed upon completion of the task to take the Skytrain back to his residence and send a text to L. to report completion of the task. Mr. Prins was paid \$300 for this assignment. K. Scenario Nine
- [98] L. took Mr. Prins to the same restaurant in Delta for lunch. They continued talking over lunch. For this assignment, L. instructed Mr. Prins to drive a clean rental vehicle containing no contraband to Brentwood Mall. Once he parked the vehicle, he was to take the Skytrain to the Holden Street station in Burnaby. At that station he was to surreptitiously search out H. He then follow H. by Skytrain to Brentwood Mall where he observed H. place his backpack in the trunk of the rental vehicle and drive it away. Mr. Prins as directed advised L. by telephone of these observations. Mr. Prins was then instructed to take the Skytrain back to his residence. He was paid \$300 for this scenario. L. Scenario Ten - the Mr. Big interview
- [99] The final scenario occurred on December 2, 2012. L., K., and Mr. Prins met at the coffee shop in Surrey where they had previously met. Mr. Prins purchased coffee for everyone and brought it to the vehicle driven by K. The three men had a conversation inside that vehicle where the Crown alleges Mr. Prins made various inculpatory statements. During the conversation the criminal past, if any, of Mr. Prins and his current charges were the subject

of conversation and he was told on several occasions during the conversation that he could leave the organization at any time. Both undercover officers told Mr. Prins that he needed to be upfront with them. L. then directed Mr. Prins and K. to transport a number of big-screen televisions in boxes to a storage locker in Whistler, British Columbia. On the way to Whistler the three went into Stanley Park where Prins led K. to a buried firearm, which was retrieved and turned over to L. After the firearm was dealt with Mr. Prins and K. drove together to Whistler and dropped off the televisions at a designated storage locker. That firearm and a photograph of it have been marked as Exhibits in this proceeding.

- [100] After the delivery of the televisions Mr. Prins and K. drove to the same restaurant on Highway 99 in Squamish where they met L. who paid for their meals. When the meal was done the three of them drove together to drop off Prins at his residence around 7:30 pm.
- [101] The Crown has submitted that Mr. Prins made a number of inculpatory statements, during the course of Scenario ten, which were set out in a chart in the Crown's written submissions (See Crown's written closing submissions, page 28-32). The chart included a first column with a transcript reference, a second column with a subject reference and a third column which contained a statement of the accused or an exchange between the accused and L. in order to provide context. For the purposes of this voir dire only, without making any final findings concerning credibility or reliability involving Mr. Prins, I accept the Crown's characterization of these statements as inculpatory. The chart referred to is set out below.
- Page 17, line 259 Robbery Prins - "I have very big trust issues. We'll get back that in the future if big stuff comes to play, but for now I had accusations of uh using a f-, a pistol and a mask and going up to someone and saying give me your car, taking his car, uh getting in the car, driving it away leaving it right next to the West Vancouver Police Department. Um leaving the car there with my DNA apparently in it." L. - "In the car" Prins - "In the car. Then going to another individual who I lived with on the street for a while and apparently I confessed it to him and then he went to the police and told them that I had done this and then he showed them where I was staying on the street, minding my own business and had me arrested and I was put in jail." Page 27, line 413 Robbery Prins - "But that would be quiet a coincidence for someone else to be saying that this, the exact car that was stolen and there's my DNA" Page 28, line 434 Robbery Evidence L. - "So what else, what else have they got then?" Prins - "That's about it. Gotta mask they got some gloves, which are actually " L. - "They don't got the gun though" Prins - "No. That's in Stanley Park" Page 29, line 444 Firearm L. - "There's no question it's gotta get taken care of" Prins - "It's safe" K. - "Yah but still man we gotta get rid of that" L. - "It's not safe man. Let me ask you this what " Prins - "I'm gonna sit on that guys. It's it's " L. - "What's what's " Prins - " it's hidden" L. - " what's the " Prins - "very well." Pages 33 - 37 Identity Evidence and Balaclava Discussion regarding identifying features from robbery. Page 40, line 610 Confessing to S.W. L. - "You gotta let shit go. Now we gotta frickin' talk about this guy you talk, talked too. You told him everything." Prins - "Yes" Page 45, line 679 S.W. Prins - "I want " L. - "Which is it?" Prins - " I wanna see something happen" L. - "You wanna see something happen because you're you're angry that he, he rolled on you or?" Prins - "That but also it's like a soul thing for me. You guys don't " L. -

"Like are y-you, is it more so, so you can get out of the problem you're in now? Or is it because you " Prins - "Somewhat" L. - " what some vengeance" Prins - "Somewhat, but mostly for vengeance" Page 84 - 88, line 1279 onwards Robbery at Fraser Golf Centre Prins mentions asking for keys, car and victim asking to keep phone; Prins mentions wearing black clothing; Prins might have pointed the gun at victim Page 93 - 94 lines 1419, 1426 and 1430 S.W. Prins - "Yah. I just want him to disappear" Prins - "I, I know, I know how to take care of things that way he's never found" Prins - "Chemicals and a long trek down a forest road where " Page 208, line 3165 Firearms not registered Prins - "It's still good uh?" It's, It's not registered so it, it's need some cleaning up cause it's rusted Page 209, line 3179 Describing firearm as it is turned over Prins - "Yah, I'm fine. If you get a different barrel for it, you can get different barrels for it. It shoots 7.62 by 25 millimetres and 9 mill" Page 248 - 255 Shell Break and Enter Prins mentions: · breaking into Shell, in Squamish; · wearing a mask; · same clothing as robbery; · stealing chips, pop and sandwiches; · leaving a sledge hammer; · committing it around May 31 of 2012; · smashing front window; · alarm going off; · response time being slow; · using a rock the first time to try and break in; · breaking in twice; Page 289, line 4395 Prins pointing out Shell Gas Station K - "Is this the Shell?" Prins - "That's the one" K - "This one?" Pins - "Yah" Page 435 - 436 line 6580 - onwards Break and enter into Shell Prins mentions: · Shell he broke into; · Sledge hammer; · Breaking in front door X. Mr. Prins's Confession to Mr. Big and its aftermath: Production of the firearm

[102] As described above, on December 6, 2014, Mr. Prins was in the company of the undercover officer and his notional boss, Mr. Big.

[103] The idea put forward by the investigators was that the gun, the location of which Mr. Prins knew, had to be provided to Mr. Big so that any problems which occurred if the gun was found later by law enforcement would not come back to haunt or damage; "blowback on" the fictional criminal organization.

[104] In a key segment of conversation between Mr. Prins and K. at Scenario ten page 65, lines 988 to 998, the following exchange takes place: Prins hope you guys aren't out to screw me here and to and give that gun to the fuckin' . K. No, no, no, no, no, no. You're not first and you will not be the last. Prins Yah K. That un somthin's been Prins Cause I'll fight for my life on that. K. No fuck Prins If you guys are gonna go and fuckin' give that to the cops, I'll fuckin'.. K. Kay do yo Prins strangle you with my hands.

[105] Later, at Scenario ten, page 147, lines 2244 -2252 as the parties are driving towards the location of the gun in Stanley Park, the following exchange takes place" Prins - I'm just hoping it not gonna be a sting when I take the piece up. K. a sting Prins Cops waiting. K. Oh, we'll take a look around first. Prins Sure. Cause we can't just go and throw it into the ocean right? K. No. Prins There's K. Fuckin' leave it. Prins divers right?

- [106] Again later at Scenario ten, page 148, lines 2261 - 2267, the following exchange occurs, concerning the handgun: Prins It's safe where it is. K. I know but still. Prins It's about a foot underground. K. you want to fix your car or buy a new one? Prins No, I wanna fix it. Actually what I cause here's the story right. I wanna make changes in the world , some of them are bloody but that's the pay, the price people pay for being sell outs.
- [107] Based on these conversations and a number of others which occurred near the time that the location of the handgun was shown to K. by Mr. Prins using his foot to mark the location, that there was no evidence Mr. Prins showed any fear of the undercover officers whatsoever. As the gun was actually being retrieved from underground, he wondered aloud "how bad it that gonna smell?" (Scenario ten, page 206, line 3135). XI. Mr. Prins' Background and Day to Day Functioning
- [108] The personality displayed by Mr. Prins showed a high level of daily functioning, working in various jobs. His speech demonstrated knowledge, real or imagined in various areas, including banking, law, cars, strategy, planning street smarts, world economics, firearms, and ammunition. The term imagined is appropriate as Mr. Prins spoke with confidence about areas of the world where he has never been. I also make the following findings: · Mr. Prins was a graduate of a respected university program specializing in business. · Mr. Prins was very motivated to work for the fictitious Mr. Big organization. · Mr. Prins had little money and enjoyed the money he made while working with or for the undercover officers.
- [109] The total amount Prins was paid for work was \$1,712. He was treated to two meals at a restaurant in Squamish and also received an extra pizza to take back to his residence. Other food was also purchased for him from different restaurants in Surrey and coffee was paid for on several occasions. XII. Analysis and Findings Regarding the admissibility of the Mr. Big evidence
- [110] As noted above, "the assessment of the probative value of evidence requires the court to engage in a preliminary weighing to the evidence in other that the trial judge, as gate keeper, may determine threshold reliability and not the ultimate question of whether the evidence should be accepted. Mr. Big confessions derive their probative value from their reliability: Hart, para. 99, Balbar at para. 336.
- [111] In this voir dire, inculpatory statements made by Mr. Prins concerning the details of the offences charged to S.W. and to undercover officers particularly in the course of Scenarios three and ten were heard. He also led police to the location of a buried handgun located in a remote area of Stanley Park in Vancouver.
- [112] In defence counsel's submissions it was urged that the court should find that all of the information Mr. Prins divulged about the offences charged came from police or newspaper sources. This submission is not persuasive in the circumstances unless the court was to reject in its totality the evidence of S.W. and the directions given to the location of the handgun in Stanley Park. Such a rejection would be contrary to the preliminary weighing of evidence which Hart requires. The knowledge by S.W. of details of the offences is consistent

with features of the evidence revealed in the surveillance videos from the gas station in Squamish and the BC Ferry terminal in Horseshoe Bay, as well as the evidence of Mr. Do from the Surrey Golf centre.

- [113] Given this consistency, the evidence presented by the Crown clearly has markers of reliability, which would not permit the court to draw the conclusion, at this threshold stage, that the only source of information about the offences known by Mr. Prins was derived from the police interviews or a newspaper article.
- [114] The testimony given by Mr. Prins in the voir dire must also be considered in this preliminary weighing of evidence. On repeated occasions, Mr. Prins while giving evidence said that he was certain or positive the undercover officers with whom he was dealing were police officers. He also used phrases such as "vigilante" police or "off the clock" police but these references had different meanings than the unmodified word "police". He also testified that he applied various "tests" to the undercover officers' statements and they failed the tests so he knew the undercover officers were not members of a criminal organization and must be police. This is a significant inconsistency in the testimony of Mr. Prins that is, if this evidence is accepted, it is significantly at odds with the suggestion that his will was overcome by clandestine police operations such as a Mr. Big and which at this threshold stage would prevent the court from finding the testimony of Mr. Prins reliable.
- [115] The reliability of inculpatory statements, in particular in this case directing the police to the location of the buried firearm in Stanley Park are to be considered against the non-exhaustive checklist provided (Hart at para. 102), list includes the length of the operation, the number of interactions between police and the accused, the nature of the relationship between the undercover officers and the accused, the nature and extend of the inducements offered, the presence of any threats, the conduct of the interrogation itself and the personality of the accused, including his or her age, sophistication, and mental health. Having considered each of these factors in the above reasons, I am not satisfied that the confession or inculpatory statements were the product of fear or coercion; the will of Mr. Prins was not overcome by the Mr. Big operation.
- [116] Further, as noted above, at this threshold stage, the Crown has presented a body of evidence marked with reliability and consistency (Hart at para. 105), and I conclude that the probative value of the evidence far outweighs its prejudicial effect.
- [117] In the assessment of the abuse of process in the context of the Mr. Big operation, I adopt the procedure applied by Arnold-Bailey, J. in Balbar where she considered the factors listed by Fitch, J. (as he then was) in McDonald at para. 247.
- [247] Whether a particular manifestation of the Mr. Big strategy constitutes an abuse of process is a case-specific inquiry. It must take into account "all the circumstances". Without being exhaustive, the following considerations may be relevant to the analysis: · The nature of the offence being investigated: United States of America v. Burns (No.1), 94 B.C.A.C. 46, 117 C.C.C. (3d) 454 at para. 11, where Hollinrake J.A., for the Court, quoted with apparent

approval the extradition judge's conclusion that the Mr. Big technique, as applied in that case, "would not shock the sensibilities of an informed community considering the brutality of the crimes then under investigation ", and Rothman at p. 697-98; · The background of the target as it is known to the police, including factors going to his character or disposition, life experience, and particular vulnerabilities arising from such things as age, addiction and emotional health: Langlet at paras. 115-120; · The extent to which the investigation exploited the unusual vulnerabilities of the target: N.R.R. at paras. 425-432; · The extent to which the implementation of the Mr. Big technique was coercive having regard to the length of the investigation and its overall nature or tone: Langlet at paras. 114-115, 121-129; · The target's known or suspected criminal history: Langlet at para. 120; · The target's known history of violence (apart from the offence being investigated) including its nature, degree, frequency and temporal connection to the offence under investigation; · The reaction of the target to scenarios he or she would regard as involving overtly criminal acts before scenarios involving simulated violence were introduced: Langlet at para. 126; · The reaction of the target to the scenarios incorporating simulated violence: Perreault, at paras. 8 and 42; R. v. Decoine-Zuniga, 2013 ABQB 563 at para. 57; · The nature and extent of the simulated violence utilized in the investigation; and · The reliability of the evidence obtained through this investigative technique: Grandinetti, at para. 36.

- [118] The weight to be given to any one of these factors will vary with context. The inquiry must also take account of the governing jurisprudence and where the technique used in a particular case fits within that body of law. It is to that issue I now turn.
- [119] With respect to the first factor listed above, the investigation by police of any individual suspected of using a firearm to commit offences against unarmed civilians, particularly those made vulnerable by being in positions of trust and holding cash for their employers, would not shock the sensibilities of an informed community considering the potential for violence in the crime under investigation. The second factor listed above does not particularly apply to this case as there were no particular vulnerabilities arising from age, addiction, or mental health. With respect to the third factor listed above, while the accused espoused political and racial beliefs which would not have wide popularity, I find for the purposes of this voir dire, no unusual vulnerabilities were demonstrated in the evidence presented in this voir dire.
- [120] There is a universal concern about the coercive nature of Mr. Big operations, however in this case, the undercover officers repeatedly told Mr. Prins he could leave the "organization" without consequence, the scenarios did not involve any criminality, and there were few scenarios compared to many other Mr. Big cases. There was no overt violence in any scenario. The accused had no criminal record but he was suspected of certain offences. He was not charged nor were the offences proven. The reliability of the evidence obtained particularly the handgun, which is a piece of real evidence, is very high.

[121] This was a brief Mr. Big investigation compared to other reported cases; 30 scenarios in Mack; 63 scenarios in Hart and 86 scenarios in McDonald. As noted, in this case there was a Bump followed by 10 scenarios, all of which were events without particular drama or intensity. Mr. Prins appeared to like the undercover officers and had a cordial relationship with them. He enjoyed receiving money for the work he did and also enjoyed the meals he received. Notwithstanding the money and meals, he felt free to assert himself. For example he said that if the gun was turned over to the police, he would strangle K. with his bare hands.

[122] Based on the review of the listed factors, and considering them in a cumulative way, I find that the abuse of process claim must fail. XIII. Conclusion

[123] For these reasons, I find that the Crown has met the onus it bears to show that evidence obtained in the Mr. Big investigation that targeted the accused, Mr. Prins, may be admitted into evidence at trial because the probative value of this evidence significantly exceeds its prejudicial effect. More specifically, I have found that the evidence contained in the Bump and Scenarios 1 -10 may be admitted at trial. Further the defence has failed to establish an abuse of process based on the manner in which the Mr. Big investigation was carried out or based on the nature of its target, Mr. Prins. I dismiss the application by Mr. Prins to exclude the inculpatory statements made during the course of the Mr. Big operation. "Ball J."
Appendix A Crown's Authorities

1. R. v. Hart, [2014] 2 SCR 544
2. R. v. Streiling, 2015 BCSC 1044 (Trial Decision)
3. R. v. Streiling, 2015 BCSC 597 (Voir dire)
4. R. v. Balbar, 2014 BCSC 2285
5. R. v. Langlet, 2012 BCS 1621
6. R. v. McDonald, 2013 BCSC 2344
7. R. v. Mack, 2014 SCC 58
8. R. v. West, 2015 BCCA 379
9. R. v. Hales, 2014 SKQB 411
10. R. v. Ledesma, 2014 ABQB 788
11. R. v. Keene, 2014 ONSC 7190
12. R. v. Magoon & Jordan, 2015 ABQB 351
13. R. v. Allgood, 2015 SKCA 88
14. R. v. M.M., 2015 ABQB 692

15. R. v. Johnston, 2016 BCCA 3
 16. R. v. Bahia and Baranec, 2016 BCSC 60
 17. R. v. Mildenberger, 2015 SKQB 27
 18. R. v. Laflamme, 2015 QCCA 1517
 19. R. v. Randle, 2014 BCSC 1990
 20. R. v. Randle, 2016 BCCA 125
 21. R. v. Subramaniam, 2015 QCCS 6366
 22. R. v. Hewitt, 2015 BCSC 1836
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