

CANADA / JUDGMENT

R. v. Sipes

2009 BCSC 612

COURT

Supreme Court of British Columbia

DECIDED

4 May 2009

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2009 BCSC 612 R. v. Sipes

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sipes,

2009 BCSC 612

Date: 20090504

Docket: 66431

Registry: Kelowna

Regina

v.

Dale Gordon Sipes, Leslie Podolski, Sheldon Richard O'Donnell,

Peter Manolakos and Douglas Corey Brownell

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Before: The Honourable Mr. Justice Smart

Searches of the Manolakos Residence

Reasons for Judgment

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Place of Hearing:

Vancouver, B.C.

Place and Date of Judgment:

Vancouver, B.C.

May 4, 2009

I. INTRODUCTION

- [1] The RCMP searched the residence of the applicant, Peter Manolakos (the "Residence") on August 30, 2005 and on May 27, 2006. The searches were conducted under the authority of three search warrants (the "warrants"). Two of the warrants were executed simultaneously on May 27, 2006; each warrant authorized the police to search for different things to provide evidence for different offences. Each of the three warrants was issued to a different police officer by a different judicial officer.
- [2] The applicant submits there was not sufficient evidence for any of the warrants to have been issued to search the Residence.

- [3] I will first provide some background information and review the law I will follow. I will then consider each warrant individually reviewing some of the evidence and the submissions of counsel before providing my analysis for the decisions I have reached.

II. BACKGROUND

- [4] These searches were part of an extensive RCMP investigation into a series of murders that occurred in or near the City of Vernon between mid-2004 and mid-2005. The RCMP believed that:
- a criminal organization called the Greeks operated an illegal drug trafficking business in the Vernon area;
 - the Greeks were responsible for the murders;
 - the murders were committed in furtherance of the Greeks' drug trafficking business; and
 - the applicant was the leader of the Greeks.
- [5] The RCMP investigation evolved into a task force named Project E-PECCANT. RCMP officers from Vancouver and Kelowna were assigned to assist the investigation. Project E-PECCANT focused on investigating not only the alleged murders but also other criminal offences committed by the Greeks including drug trafficking and money laundering.
- [6] The RCMP employed electronic and physical surveillance and conducted numerous searches as part of their investigation. This application concerns three of those searches.
- [7] The Crown has proceeded by direct indictment. Three of the murders that were investigated have been charged on the indictment.
- [8] The applicant is charged, along with three other accused, with the first degree murder of Ronald Thom on May 31, 2005. He is also charged with the manslaughter of David Marnuik in approximately July 2004. Three of the other accused are charged with the first degree murder of Mr. Marnuik.

III. THE LAW

Section 487 of the Criminal Code

- [9] The warrants were issued pursuant to s. 487(1). This section reads, in part, as follows:

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

- (b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence against this Act or any other Act of Parliament,

may at any time issue a warrant authorizing a peace officer

- (d) to search the building, receptacle or place for any such thing and to seize it

[10] Cromwell J.A. (as he then was) considered the law concerning the granting of a s. 487 search warrant and the role of the trial judge when reviewing such a warrant in *R. v. Morris* (1998), 134 C.C.C. (3d) 539 (N.S.C.A.).

[11] He explained that police searches bring into play two fundamental values in our society: the value of privacy and the value of effective crime detection. He said that what is critical to the balancing of these competing values is the existence of reasonable grounds. He referred at p. 549 to the oft-repeated words in *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145 at p. 167:

The state's interest in detecting and preventing crime begins to prevail over the individual's interest in being left alone at the point where credibly-based probability replaces suspicion.

[12] Cromwell J.A. explained, beginning at p. 549, what an Information to Obtain a Warrant ("ITO") must contain to establish "credibly based probability":

Without attempting to be exhaustive, it might be helpful to summarize, briefly, the key elements of what must be shown to establish this "credibly based probability":

(i) The Information to obtain the warrant must set out sworn evidence sufficient to establish reasonable grounds for believing that an offence has been committed, that the things to be searched for will afford evidence and that the things in question will be found at a specified place: (*R. v. Sanchez* (1994), 93 C.C.C. (3d) 357 (Ont. Ct. (Gen. Div.)) at 365.

(ii) The Information to obtain as a whole must be considered and peace officers, who generally will prepare these documents without legal assistance, should not be held to the "specificity and legal precision expected of pleadings at the trial stage": *Sanchez*, supra, at 364.

(iii) The affiant's reasonable belief does not have to be based on personal knowledge, but the Information to obtain must, in the totality of circumstances, disclose a substantial basis for the existence of the affiant's belief: *R. v. Yorke* (1992), 115 N.S.R. (2d) 426, 77 C.C.C. (3d) 529 (C.A.); affirmed [1993] 3 S.C.R. 647, 84 C.C.C. (3d) 286.

[13] The meaning of the words "reasonable grounds to believe" was also explained in *Scott C. Hutchinson, James C. Morton, & Michael P. Bury, Search and Seizure Law In Canada*, vol. 1, looseleaf (Toronto: Thomson Carswell) at p. 16-18:

The Information to Obtain a search warrant must, therefore, give the justice of the peace sufficient weighable evidence to allow him or her to find independently a credibly-based probability that all of the preconditions for the issuance of the warrant exist.

A practical, reasonable and non-technical probability that evidence is available, is all that is required. In determining whether such a likelihood exists, the neutral judicial officer (the justice) can consider hearsay evidence. In assessing whether [the issuing justice of the peace] could conclude that such evidence is entitled to any weight, a reviewing court must have regard to the "totality of the circumstances".

[14] In relation to hearsay evidence, the authors state at p. 16-10:

Such evidence can include hearsay, but where hearsay evidence is used it must be presented in a way that will allow the issuing justice [to] make up his or her own mind about how trustworthy the original source of the evidence really is. The most common example of hearsay involves information coming from colleagues involved in the investigation. These parties should be named and their source of knowledge identified. If the hearsay evidence is traced back to an original source, the justice can assess the value of that piece of evidence in building the reasonable grounds to believe in the preconditions of issuance .

- [15] I am mindful that police officers are not lawyers. Their expertise is in conducting criminal investigations, not in drafting legal documents. They are not experts in the nuances of the criminal law. They are often required to prepare applications for warrants in the midst of an investigation in circumstances of at least some urgency. They are preparing documents as events are unfolding, not assessing them in hindsight as lawyers and judges do when reviewing them.
- [16] That said, we expect police officers to have a reasonable understanding of what the law requires from them. We expect them to obtain legal advice when necessary and when time and circumstances permit. We expect them to make a reasonable attempt to make full, fair and frank disclosure of all relevant evidence in order that the issuing judge or justice can make an independent, informed decision whether to grant the requested warrant.
- [17] The concept of reasonableness guides much of the analysis of s. 8 of the Charter. In my view, it also guides judicial assessment of the conduct of the police when attempting to balance the competing values of privacy and crime detection.
- [18] In relation to the three searches at issue on this application, each issuing judge or justice had to be satisfied that the ITO before them provided reasonable grounds to establish that the things or items sought in the warrant:
- (i) would be found at the Manolakos residence;
 - (ii) at the time of the search; and
 - (iii) would afford evidence of the commission of the named offences.
- [19] I granted leave to the applicant to cross-examine each police officer who swore the ITO for each warrant. There is, therefore, additional evidence before me that was not before the issuing judge or justice.
- [20] The applicant submits that there was not sufficient evidence on the face of each ITO, or alternatively, after considering the evidence introduced on review, for the warrants to have been issued. More specifically, the applicant argues that there was not sufficient evidence that the things or items sought would be found at the residence.

The Role of the Reviewing Judge

- [21] The reviewing judge has the responsibility to ensure that the warrant was lawfully issued. Fulfilling this responsibility is necessary to protect the rights of the applicant and the integrity of the process. However, the review is a limited one. The question is not whether the reviewing judge would have granted the warrant but whether there was reliable evidence that might reasonably be believed on the basis of which the warrant could have issued: see *R. v. Araujo*, 2000 SCC 65, [2000] 2 S.C.R. 992 at para. 54.

Amplification

- [22] When assessing the sub-facial challenge to each ITO, I must decide what use I should make of the evidence I received during the review of that ITO. This requires me to determine the role amplification plays when reviewing a warrant.
- [23] Mr. Nathanson submits that amplification is a different process from the review process explained in *R. v. Bisson*, [1994] 3 S.C.R. 1097, aff'g [1994] R.J.Q. 308, 87 C.C.C. (3d) 440 (C.A.) and referred to at para. 57 of *Araujo*. He argues that amplification by the Crown is limited to correcting erroneous information and minor technical details that occurred despite the good faith of the officer. In other words, it is only the accused who may add evidence that could or should have been included in the ITO but was not.
- [24] Mr. Ross takes a similar position. He argues that this biased approach to amplification results from the ex parte process for obtaining warrants and the obligation to make full, fair and frank disclosure of all relevant evidence to the issuing justice or judge. He submits that if an applicant fails to do so at the time he or she applies for the warrant, he or she is foreclosed from doing so later by way of amplification.
- [25] Mr. Jardine disagrees with the defence position and refers me to a number of decisions including: *HMTQ v. Pilarinos and Clark*, 2001 BCSC 1844; *R. v. M.(N.)* (2007), 223 C.C.C. (3d) 417 (Ont. S.C.J.); and *R. v. Plant*, [1993] 3 S.C.R. 281.
- [26] In *Plant*, the ITO included information obtained from an anonymous tip. The affiant swore that the tipster had said that marihuana was being cultivated "at the residence of 2618 26 Street S.W.". In fact, the tipster had identified the residence as being a "cute house" within the 2600 block of 26th Street near a house with many windows; and the police, after receiving the tip, had conducted surveillance and determined the address of the "cute house". The affiant had not attempted to mislead the issuing justice but rather, in an effort to be concise, had omitted the surveillance that connected the tip to the address.
- [27] Sopinka J. addressed the process for reviewing the contents of the ITO in light of this error. At p. 298 of his decision, he said:

In considering the material that was properly before the authorizing judge, however, only the information actually obtained from the tipster should be included. In addition, this information could be amplified by reference to the fact that the police were able to locate a residence matching the description which they were given .

[emphasis added]

[28] Amplification was also considered in *Morris* and in *Araujo*.

[29] In *Morris* there was inaccurate and misleading information in the ITO. The affiant had sworn the ITO knowing that it contained this erroneous information but without any intention to mislead the issuing justice. In assessing the effect of these errors on the validity of the warrant, Cromwell J.A. identified two issues for the Court to address. At p. 547 of his decision he said:

This question gives rise to two related issues about the proper basis for the review of the warrant. The first is whether inaccurate or misleading material must be excised from the Information to obtain the warrant and its adequacy assessed on what remains. I will call this the excision issue. The second is whether the reviewing court is (in this case the trial judge) entitled to take into account material adduced on the review but which was not placed before the issuing justice. I will call this the amplification issue.

[emphasis added]

[30] He explained the importance of candour by the police when applying for a warrant. He also emphasized that the Charter seeks to prevent unreasonable intrusions of privacy, not to sort them out after the fact. Despite these important considerations he concluded that the integrity of the prior authorization process could be protected in less inflexible ways than by the automatic vitiation of the warrant because of inaccurate and misleading information presented to obtain it.

[31] Cromwell J.A. conducted a lengthy review of Canadian and American jurisprudence, including decisions from this Province. He quoted from *R. v. Budai*, [1995] B.C.J. No. 1091 (S.C.) where Braidwood J. (as he then was) decided that it was appropriate for him to consider all of the evidence elicited on review when deciding the challenges by the defence to the warrant before him.

[32] Cromwell J.A. then summarized, at pp. 568-569, the principles he determined applied to a sub-facial challenge to a warrant. Point four of his summary states:

4. In assessing the validity of the warrant, the trial judge, generally, is entitled to consider all evidence bearing on the existence in fact of reasonable and probable cause shown to be in the knowledge of the police at the time the warrant was sought. However, such evidence cannot be used if it was obtained by unconstitutional means or (I am inclined to think) to amplify fraudulent or intentionally misleading material in the Information to obtain.

[emphasis added]

[33] In Araujo, LeBel J., on behalf of the Court, considered excision and amplification. He referred to Morris and at para. 57 said:

In Bisson, supra, at p. 1098, our Court gave very short reasons but also affirmed the reasons of Proulx J.A. in the Quebec Court of Appeal, [1994] R.J.Q. 308, 87 C.C.C. (3d) 440. In his judgment, Proulx J.A. was clear that a court must look at non-disclosure of any material fact [translation] "with respect to the affidavit considered as a whole, or even with respect to the remaining parts of it" (p. 455 C.C.C.). He quoted at p. 457 C.C.C. from the Ontario Court of Appeal in Church of Scientology, supra, at pp. 528-29: "[T]he function of the reviewing judge is to determine whether there is any evidence remaining, after disregarding the allegations found to be false and taking into consideration the facts found to have been omitted by the informant, upon which the justice could be satisfied that a search warrant should issue" (emphasis added) also affirmed in Morris, supra, at p. 558. Again, erroneous information is properly excised. In Bisson, supra, of course, the recanted information obviously had to be excised entirely and the remaining information then assessed in the totality of the circumstances. Where the erroneous information results from a simple error and not from a deliberate attempt to mislead the authorizing judge, amplification may be in order. Nonetheless, there would be no need to seek to amplify the record if sufficient reliable material remains even after excising the erroneous material.

[emphasis added in Araujo]

[34] LeBel J. makes it clear that a reviewing judge should disregard or exclude erroneous information in an ITO and consider omitted evidence presented by the defence that should have been included. Whether this process is described as excision and amplification or as part of the review, it is a process whereby the defence seeks to have the reviewing judge subtract evidence that is incorrect and to add evidence which should have been included.

[35] This part of the process appears clear. What is less clear is whether the Crown may also amplify the evidence contained in the ITO.

[36] LeBel J. in Araujo states at para. 58 that the Crown may correct erroneous information that resulted from an honest error by the affiant and not a deliberate attempt to mislead:

Thus, in looking for evidence that might reasonably be believed on the basis of which the authorization could have issued, the reviewing court must exclude erroneous information. However, if it was erroneous despite good faith on the part of the police, then amplification may correct this information.

[37] In other words, the erroneous evidence is corrected rather than excised.

- [38] If the Crown is permitted to correct erroneous evidence in response to a defence application to excise it, should the Crown not be permitted to add evidence that the police knew at the time they applied for the warrant in response to a defence application to do the same? In either circumstance, what is critical is that the error or omission by the police was not a deliberate attempt to mislead the issuing judge or justice.
- [39] LeBel J. explains at para. 59 of *Araujo* that to deny correction and amplification of honest errors and omissions would be to permit form to trump substance:

When using amplification, courts must strike a balance between two fundamental principles of search and seizure law that come into a rather unique tension in these kinds of situations: see *Morris*, supra, at pp. 567-68. As a result of this tension, the cases disclose divergent attitudes to incomplete or incorrect affidavits and amplification thereof: see *Morris*, at pp. 560-67; cf. *R. v. Madrid* (1994), 48 B.C.A.C. 271, at pp. 285-90, and *R. v. Harris* (1987), 35 C.C.C. (3d) 1 (Ont. C.A.), at pp. 23 and 27 (leave to appeal refused, [1987] 2 S.C.R. vii). The danger inherent in amplification is that it might become a means of circumventing a prior authorization requirement. Since a prior authorization is fundamental to the protection of everyone's privacy interests amplification cannot go so far as to remove the requirement that the police make their case to the issuing judge, thereby turning the authorizing procedure into a sham. On the other hand, to refuse amplification entirely would put form above substance in situations where the police had the requisite reasonable and probable grounds and had demonstrated investigative necessity but had, in good faith, made some minor, technical error in the drafting of their affidavit material. Courts must recognize the two principles of prior authorization and probable grounds, the verification of which may require a close examination of the information available to the police at the time of the application for a wiretap, in considering the jurisprudence on amplification. The approach set out earlier to erroneous information in an affidavit on a wiretap application attempts to reconcile these principles. Courts should take a similar approach to amplification.

[emphasis added]

- [40] In considering the scope and purpose of the review process, it is important to remember that what is at issue is whether the requirements of s. 487 have been satisfied based on what the police knew or ought to have known at the time of the application. Whether evidence from an informant or witness turns out on review to be untrue is only relevant to the question of whether the affiant knew or ought to have known that it was untrue at the time he or she swore the ITO: see *R. v. Garofoli*, [1990] 2 S.C.R. 1421.
- [41] In my view, amplification is part of the review process that occurs during a sub-facial challenge to an ITO. During this review, if the applicant establishes that the affiant knew or should have known that evidence was false, inaccurate or misleading, that evidence should be excised from the ITO when determining whether the warrant was lawfully issued. Similarly, if the defence establishes that there was additional evidence the affiant knew or should have known and included in the ITO in order to make full, fair and frank disclosure, that evidence may be added when determining whether the warrant was lawfully issued.

- [42] During this sub-facial review process, the Crown may also amplify for at least two purposes: one, to correct information that was, in good faith, erroneously stated in the ITO; and two, to add evidence which could have been included in the ITO when the defence seeks to do the same. I need not decide if the Crown may amplify for any other purpose.
- [43] In my view, amplification by the Crown for these purposes is consistent with the principles that ground judicial pre-authorization. It only applies to a sub-facial challenge to the sufficiency of an ITO. It cannot revive an ITO deficient on its face. It is only engaged when necessary. It is not permitted to correct deliberate mistakes committed in bad faith. It ensures a proper balance to the exercise of amplifying the evidence that was before the issuing justice to include other evidence that was known to the police at the time they applied for the warrant.
- [44] Allowing amplification recognizes that a competent police officer in the rush of an investigation may make honest drafting errors, may overlook evidence, or may fail to appreciate the significance of evidence which he or she should or could have included in their ITO.

Simultaneous Searches

- [45] What if the police have reliable information that evidence relevant to proof of a serious offence is at one of three residences, but they cannot establish which of the three? Take, for example, a firearm used to commit a murder. Could they obtain warrants to search all three residences?

- [46] The authors of Search and Seizure in Canada address this issue at p. 16-20:

The importance of the exact nature of this standard can be seen in the problem of simultaneous searches. There may be circumstances where investigators have grounds to believe that an item they wish to seize may be in one of a number of different locations. For example, an investigator has learned that the owner of a business keeps a secret set of records with the true affairs of the company in a notebook computer which she moves between two business locations and her home, but nowhere else. The investigator may want to obtain three different search warrants to search simultaneously these three separate locations for the notebook (since any other course could risk loss or destruction of the evidence). If the requirement of reasonable and probable grounds means that the justice has to be satisfied to at least a "51% probability" that the notebook was at one of these locations as opposed to the others, the investigator would probably not be able to get even one warrant - let alone successive warrants - as there is simply no evidence suggesting that it is any more likely that the secret records are at one location over the others. However, as noted, the weight of the authorities to date state that reasonable and probable grounds does not require that type of certainty or probability. All that is required is "reasonable probability". Accordingly, if it is reasonably probable that the subject left the notebook in any one of the three locations (as it would appear to be), then the requirement has been satisfied. For practical reasons, an investigator in such circumstances would want to be able to move on all

locations within a fixed and limited span of time to ensure that the execution of one warrant did not "tip the hand" of the investigation, providing the target with an opportunity to destroy evidence.

The American authorities have recognized that simultaneous search warrants in such circumstances comports with the constitutional standard of probable cause. Presumably these authorities would apply in Canada, because as noted, the courts have been clear in their conclusion that the constitutional standard, whether called probable cause or reasonable grounds, is the same in both countries.

- [47] This interpretation of "reasonable grounds" considers the places to be searched as a whole, rather than individually. It is a common sense approach to a practical problem: valuable evidence may be destroyed or lost if a search is conducted at only one of several possible locations where that evidence may be located.
- [48] This interpretation does not alter the constitutional standard which requires a credibly-based probability that evidence proving the alleged criminal offence will be found. Rather, it considers the places to be searched collectively, rather than separately, where there is a realistic possibility the evidence may be at any one of several locations.
- [49] In my view, this reasoning is consistent with the purpose underlying the use of search warrants as an investigative aid as explained in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743.
- [50] I emphasize that I am only deciding that warrants for simultaneous searches may be granted, not when they should be. Each application for warrants authorizing simultaneous searches will necessarily be fact specific. Each application will be subject to the discretion of the judge or justice to decline to issue a warrant even if the requirements of s. 487 have been satisfied.
- [51] Simultaneous searches could result in serious intrusions into individual privacy interests. There is no doubt a number of factors that a judge or justice receiving such an application may wish to consider include: the seriousness of the offence; the importance of the evidence sought in proving that offence; the necessity of conducting simultaneous searches; and the likelihood that the evidence will be found at any particular location for which a warrant is sought.
- [52] I will now assess the sufficiency of the warrants at issue.

IV. AUGUST 30, 2005 SEARCH

- [53] Cpl. DaSilva prepared the ITO for this warrant. The offence alleged is possession of property obtained by crime. The "things" sought are listed in Appendix A to the warrant. They are the following:

- a. Canadian money/currency in various denominations packaged in bundles and or stowed in a loose manner;
- b. any documents and papers containing accounting records relating to the distribution and purchase of illicit drugs as defined in the Controlled Drugs and Substances Act, and or any documentation identifying individuals who distribute illicit drugs or are involved in the collection of monies obtained through the commission of Crime;
- c. all computer systems and their peripherals including, but not limited to:

hard drive, central processing units, cables, connectors, monitor, computer floppy disks, computer diskettes, tape backup drives, external hard drives, optical disks, mouse or any other electromagnetic acoustic, mechanical or other storage device capable of storing computer data, computer modem and all peripherals, hard copies of data and any software and manuals used in the operation of the computer.

Evidence

- [54] Cpl. DaSilva's grounds for believing that the "things or some part of them" were in the Residence are stated in Appendix C and include information from three confidential police informants, identified as Informants A, B, and C, respectively.
- [55] The Crown disclosed the names of Informants A and B and elected to support the validity of the warrant without relying on the evidence of Informant C. This was done in order to protect his or her identity.
- [56] The evidence in Appendix C supporting the issuance of the warrant is primarily that of the two informants and summaries of certain intercepted telephone calls (the "calls"). The calls occurred between June 26 and August 28, 2005, and include calls between the applicant and other alleged members or associates of the criminal organization. There is also information included from another investigator, Cpl. McAndie.

Position of the Parties

- [57] Mr. Ross does not challenge the good faith of Cpl. DaSilva or his subjective belief that the things sought would be found at the Residence. Rather, he argues that the evidence, as amplified on review, does not establish that the things listed in Appendix A would be found at the Residence when the warrant was executed.
- [58] In relation to paragraphs (a) and (b) of Appendix A, Mr. Ross argues there was insufficient evidence that records or money related to the sale of drugs were being kept at the Residence at the time of the search. He submits that the calls summarized at paragraphs 40 and 42 of Appendix C must be read in context. They refer to a meeting at the Residence when there was a "shift change". This was the reason "sheets" [papers and documents recording drug sales and drug money] were brought to the Residence that evening. He argues that although the "sheets" were brought to the Residence, they were not remaining there.

[59] Mr. Ross submits that:

- The evidence establishes that "homework" [money from drug trafficking] was more likely to be kept at places other than the Residence. He emphasizes the call at paragraph 55 where [Content Redacted] says the money will not be at the residence because nothing stays "there".
- There are only seven days during which calls summarized in the ITO provide any evidence of drug money going to the Residence and there are an equal number of calls indicating that drug money does not go to the Residence.
- The evidence does not support Cpl. DaSilva's assertion that [Content Redacted], that he was a conduit for the drug money or that the money ended up at the Residence.
- The information from Cpl. McAndie included in the ITO is nothing more than his personal conclusions or opinions that are repeated by Cpl. DaSilva. They have no evidentiary value.

[60] Mr. Ross acknowledges that there is some evidence in the ITO: that there was a criminal organization that trafficked in drugs; that the applicant played a prominent role in that organization; that the applicant lived at the Residence; that the applicant held organizational meetings at the Residence; and that drug money was taken to the Residence from time to time.

[61] However, he argues that organizational meetings were also held at other locations and this evidence should have been included in the ITO together with additional evidence which undermines the credibility of Informant A and demonstrates the evidence at paragraph 13(c) of Appendix C is incorrect. He also urges me to find that the lack of supporting surveillance evidence detracts from Cpl. DaSilva's assertion that there were nightly meetings at the Residence.

[62] Mr. Ross submits that after amplification there remains insufficient reliable evidence for the justice to have issued the warrant for the RCMP to search for any of the things sought in paragraphs (a), (b), or (c) of Appendix A.

[63] In relation to the things listed at paragraph (c) of Appendix A, Mr. Ross submits there was no evidence that there was a computer at the Residence, that anyone at the Residence used a computer, or that anyone in the organization used a computer to record information.

[64] Mr. Jardine responds that I must apply common sense, consider the evidence as a whole, and draw reasonable inferences from the evidence. He asks me to consider that:

- the applicant was the leader of the organization;
 - he exercised control over the organization;
 - the meetings held at the Residence were different from the meetings held at other locations;
- and

· the calls included in Appendix C were close in time to the issuance of the warrant and provided cogent evidence that money and records relating to drug transactions would probably be at the Residence.

[65] At paragraph 25 of Appendix C, Cpl. DaSilva refers to information he received from Cpl. McAndie, another investigator. He states that Cpl. McAndie told him that [Content Redacted] was "Manolakos' subordinate and that McAndie explained [Content Redacted] "responsibilities and duties" within the organization. The Crown argues that this is evidence that could be considered by the justice given that Cpl. McAndie was intimately involved in the investigation and the evidence is supported by many of the calls.

[66] Mr. Jardine acknowledges that the evidence at paragraph 13(c) of Appendix C is incorrect but submits there remains other evidence supporting the reliability of Informant A.

[67] He argues that:

- It is a logical inference that if drug money was going to the Residence, some accounting records or "sheets" would be kept to keep track of the drugs and drug money.
- There was evidence [Content Redacted] was issuing instructions to others and that drug money and documents recording drugs and money would go to the Residence.
- The fact that meetings were also held at other locations does not detract from the likelihood that accounting records and drug money would be found at the Residence. The organization held meetings at different locations but it was the meetings at the Residence where the drug money was counted.
- What is important is that drug money and drug records did go to the Residence for a period of time, not that they remained there permanently.

[68] Mr. Jardine submits that the question for me to answer is a simple one: could the issuing justice conclude that "homework" and "sheets" would probably be found at the Residence? In his submission there was evidence from which that conclusion could reasonably be reached.

[69] With respect to paragraph (c) of Appendix A, he agrees there was no direct evidence that there was a computer in the Residence but argues that common sense and life experience tell us that many residences have computers and that they are often used to record information. He notes that computer records may be more secure than handwritten records because access to them may be protected through the use of a security password.

Analysis

[70] The issue is not whether I would have granted the warrant, but whether there was reliable evidence that might reasonably be believed on the basis of which the warrant could have issued.

- [71] The evidence must be assessed as a whole, including reasonable inferences which can be drawn from that evidence.
- [72] The evidence in the ITO, as amplified and corrected on review, includes the evidence of Informants A and B and the calls. From this evidence the issuing justice could have reasonably concluded that:
- there was a criminal organization that trafficked in illegal drugs throughout the summer of 2005;
 - the applicant was the head of the organization and was residing at the Residence;
 - "the Castle" was another name used to describe the Residence;
 - [Content Redacted] worked under and at the direction of the applicant;
 - [Content Redacted] duties included assisting in the collection of drug money;
 - the information provided by Informants A and B was reasonably reliable notwithstanding the error in paragraph 13(c);
 - the Residence was regularly used by the applicant as a place to hold meetings and manage the organization's drug business with members or associates of the organization; and
 - "homework" and "sheets" were regularly brought to the Residence.
- [73] The calls provide cogent evidence that these activities were occurring in the weeks leading up to the search. It can be inferred that the applicant used the Residence as a convenient and safe place to hold meetings and manage the day to day operations of his drug business, including an accounting of drugs sold, money collected and profits distributed.
- [74] The fact that "homework" and "sheets" may have been delivered to other locations does not detract from the evidence that they were also taken to the Residence.
- [75] From this evidence reasonable inferences can be drawn. It is matter of common sense that the head of a criminal organization involved in drug trafficking would do so for money. This inference is consistent with the evidence of Informant A who said that the applicant received a high percentage of the profits from the sale of drugs. It is also reasonable to infer that the money would be in the form of cash, and that a leader of a criminal organization who receives cash at his residence would probably keep at least some of it at his residence to be available for business or personal use.
- [76] Although the call at paragraph 55 of Appendix C states nothing stays "there", this statement may or may not be true. For safety and security reasons the applicant may not want others to know that cash and other things connected to his business are kept at the Residence.
- [77] It is also reasonable to infer:

- that some form of accounting would be done to record the distribution and sale of drugs to associates and members, the flow of money, the payment of expenses and the distribution of profits;
- that these records would be created on a continuing basis given the continuing nature of the business; and
- that these records would be found at the Residence given that meetings were held there to account for money and the sale of drugs, and given that the leader of the organization resided there.

[78] I am satisfied that there was sufficient reliable evidence on the basis of which the justice could have concluded that the things sought in paragraphs (a) and (b) of Appendix A would be found at the Residence.

[79] However, I cannot make the same finding regarding paragraph (c) of Appendix A.

[80] I accept that it is reasonable to conclude that a computer may be found in many residences. However, is a different matter to conclude that it is probable that there was a computer in the Residence and it was used to record drug transactions. This is not a business that needed to keep permanent records in order to prepare financial statements or other documents for financial institutions or Revenue Canada; or for the many other reasons that legitimate businesses make and keep business records.

[81] In my view, this was a business that would avoid keeping computer records of its business transactions and its cash flow. It is one thing to scribble a cryptic note on a scrap of paper concerning drug sales and money received on a particular day; it is another thing to keep computerized records of such transactions. Further, the "sheets" often appear to have been prepared by others in the organization. I find it highly improbable that the information on the sheets would then be transferred onto a computer and retained.

[82] Here there was no evidence that there was a computer at the Residence, that the applicant ever used one, or that any records of the drug business were ever kept on a computer. I find there was not sufficient reliable evidence before the issuing justice on the basis of which he or she could have granted the police the authority to search for the things listed in paragraph (c) of Appendix A.

[83] In summary, I find that the warrant was validly issued to search for the things listed in Appendix A, paragraphs (a) and (b) but not (c).

V. MAY 27, 2006 - CRIMINAL ORGANIZATION OFFENCE SEARCH

[84] Cst. Kim applied for a warrant permitting the RCMP to search the Residence for "items" that would provide evidence of drug trafficking, murder, and participation in the activities of a criminal organization. His grounds of belief are stated in Appendix A. The items sought are listed in Appendix B.

[85] The justice granted the warrant but restricted the items to the following:

b. Criminal Organization:

i. Rings described as being fourteen karat gold weighing 53 grams with inscription, "support Red and White Calgary" on the face of them, Clothing, jewelry including hats with Hells Angels or "the Greeks" inscription, leather vest described as black leather with brass buttons and red trim

[86] The applicant concedes there was sufficient evidence in the ITO to establish the alleged offence and the items sought would provide evidence of that offence. He challenges whether there was sufficient evidence the items sought would be found at the Residence.

[87] The warrant that was executed was issued to Cpl. McCarl. An earlier warrant had been applied for and issued to Cst. Kim. It was not executed because the search was delayed. Cpl. McCarl applied for another warrant. When he did so, he adopted the contents of Cst. Kim's ITO. As a result, I have, as counsel did, considered the sufficiency of Cst. Kim's ITO when determining whether the warrant was validly issued.

Evidence

[88] The principal evidence supporting the existence of the items listed in paragraph (b) of Appendix B is found at paragraphs 43-46 of Appendix A.

[89] Paragraph 43 contains a summary of a report of a police interview with Jason Hallas on February 26, 2006. Some of the evidence provided in paragraph 43(a) is the following:

- Approximately four years ago Hallas began working for the "Greeks" selling drugs on behalf of Manolakos.
- On January 7, 2005, he was arrested for a drug offence. After his release from jail he was "elevated to a different role within the Greeks".
- He was called to a meeting in April or May of 2005 at "the Castle" by Manolakos, where he was presented with one of [Content Redacted] new "support rings" which signified his elevation within the "Greeks". These rings were presented to himself, Williams, Les (Podolski), Rico (O'Donnell), Nico, [Content Redacted] and Dale (Sipes). Manolakos also had one. The rings were described as being 14 karat gold weighing 53g and containing "support Red and White Calgary" on the face of them. Manolakos said their rings were for "more work and responsibility".

[90] Paragraph 43(g) states:

Pete Manolakos:

Boss of "the Greek's". Never touches the drugs but receives payment for their sales on a daily basis. "Homework" is a term for MANOLAKOS's money. He's respected and feared by members of "the Greeks" not for his personality but because of who backs him and supports him. Has only known MANOLAKOS to work at the restaurant and never seen him receive legitimate pay or perform legitimate work outside of the restaurant.

[91] The restaurant referred to is Matina's. It is described in paragraph 13(k) of Appendix A as a "frequent meeting place for members and associates of the group and is run by Codi ROGERS (ex-girlfriend) and MANOLAKOS".

[92] Paragraph 44 summarizes a police interview with a witness on [Content Redacted]. In this interview the witness said that:

- Manolakos runs the organization;
- the organization sells between 5 and 7 kilograms of cocaine per week;
- Manolakos makes all the decisions; however, his current focus is his restaurant and other business interests;
- [Content Redacted]; and
- there is a meeting every night at 9:00 at Manolakos' house.

[93] Paragraph 45 summarizes a police interview with the witness that occurred on [Content Redacted]. During this interview the witness said that:

- [Content Redacted]
- Manolakos was in charge of the organization. [Content Redacted] "Dale SIPES and Sheldon O'DONNELL, who act as MANOLAKOS' muscle".
- "Every year MANOLAKOS allowed three new prospects (candidates who wished to join MANOLAKOS' drug trafficking organization). Presently MANOLAKOS was wearing "Calgary Support" (Supporting Calgary Hells Angels)".
- "MANOLAKOS' group can move up to 3 to 7 kilos (of cocaine), but currently they are only moving 1 to 2 kilos, of which not all is sold within Vernon. Runners and drivers make trips to Grand Prairie Alberta."

[94] Paragraph 46 summarizes a police interview with the witness that occurred on [Content Redacted]. During this interview he said that:

- [Content Redacted] the vest is black leather with brass buttons and red trim".
- "MANOLAKOS had [Content Redacted] rings however rings belonging to Dale SIPES, [Content Redacted] and Pete MANOLAKOS have been seized by the police in Kelowna and Vernon. The rings are from the Calgary Support Shop SOUTHSIDE. Permission to wear the rings comes from the owner of SOUTHSIDE, Jay."

· "The persons still in possession of a ring and wearing them are Pete MANOLAKOS, Tim WILLIAMS, Dale SIPES, Sheldon O'DONNELL, [Content Redacted] and Les PODOLSKY. MANOLAKOS is wearing Jason HALLAS' ring."

[95] The applicant submits there was additional evidence which should have been disclosed to the issuing justice. The Crown agrees. This evidence includes the following:

- On August 30, 2005, the RCMP searched the Residence and among other items seized was a red and white support ring. No "support gear" other than the ring was located.
- On December 14, 2005, the RCMP searched another location in the City of Vernon known as "the Office". This was a building in which Mr. O'Donnell and Mr. Sipes had separate residences and there was a boardroom where meetings were held. Among the items seized were support gear and two support rings.
- In [Content Redacted] the RCMP arrested [Content Redacted] and seized a support ring from him.

[96] In paragraphs 47 to 100 of Appendix A is evidence from a police agent and from phone calls that were intercepted by the RCMP. This evidence discloses drug trafficking by the organization. It includes purchases of cocaine by the police agent from the applicant and [Content Redacted] on [Content Redacted] 2006; and trafficking in cocaine by the applicant, [Content Redacted] and others, that resulted in the seizure by the police of [Content Redacted] kilograms of cocaine in [Content Redacted] 2006.

[97] The Crown seeks to amplify the evidence to include paragraph 61 of Cpl. Brecknell's ITO that was used to apply for the other warrant executed at the Residence on May 27. Paragraph 61 states that the police agent attended a meeting of the Greeks at a residence in Vernon on [Content Redacted], and observed Mr. Manolakos wearing a black leather vest with red piping, black pants and a black shirt, and a large gold Hells Angels support ring on his left hand.

[98] Cst. Kim testified that he was not aware of this information from the police agent when he swore his ITO.

Positions of the Parties

[99] Mr. Ross submits that Cst. Kim, like Cpl. DaSilva, failed to understand that an ITO must provide evidence that objectively establishes that the items or things sought will be found at the place to be searched, not merely an affiant's belief they will be. Mr. Ross directs me to different paragraphs in the ITO where Cst. Kim states his personal belief that the items will be found at the Residence but fails to provide evidence to objectively demonstrate reasonable grounds to support his belief.

- [100] Mr. Ross notes that the evidence from the witness pre-dates October 2005 and the evidence from Mr. Hallas is even more dated. While he accepts that it is reasonable to infer that clothing and jewellery may be kept at a person's residence, he argues that the evidence in this ITO is so stale as to provide no basis to establish that the items sought would be there on May 27, 2006.
- [101] Mr. Ross stresses that during the August 30, 2005 search of the Residence, no support gear was found except for a support ring. He poses the question: given that evidence, how could the issuing justice conclude that support gear and another support ring would probably be found at the Residence on May 27, 2006?
- [102] He argues that the evidence in the ITO establishes there were only [Content Redacted] support rings in existence. He directs me to evidence introduced during the review concerning what the police found at the Residence on August 30, 2005, at the "office" on December 14, 2005, and on [Content Redacted] in 2006. He submits that this evidence is important when determining the probable number of rings still in existence at the time of the May 2006 search and the likelihood that either rings or support gear would be found at the Residence.
- [103] He argues that the evidence suggests there were only three support rings in existence in May 2006 and they were likely at locations other than at the Residence. He submits there was insufficient reliable evidence for the issuing justice to have concluded that the applicant had a support ring at the Residence at the time of the search.
- [104] The Crown argues that there was sufficient evidence that a support ring and the other support gear would be found in the Residence in May 2006. The fact that no gear was found at the Residence in August 2005 does not establish that it would not be there in May 2006.

Analysis

- [105] I am satisfied that there was reliable evidence in the ITO that the applicant had a support ring, that he continued to be the leader of the organization, that the activities of the criminal organization were continuing, and that the support rings had important symbolic value within the organization.
- [106] The rings demonstrated power and status to members and associates of the organization. They were a means by which the leader of the organization could recognize and reward service and loyalty. Given their importance there is no reason why the applicant would not have purchased additional rings if they were needed. In other words, I am not satisfied that the only reasonable conclusion is that there were only ever nine support rings in existence within the organization during this period of time.
- [107] I find it was not unreasonable for the issuing justice to have concluded that at least one of the support rings would probably be found at the Residence in May 2006. I make this finding without relying on amplification by the Crown.

- [108] With respect to the other items sought, I find, before amplification, that there was sufficient evidence from which the issuing justice could reasonably have concluded that these items would probably be at the Residence. The support gear, like the support rings, had important symbolic significance to the organization. The person most likely to possess the gear was the leader of the organization. The applicant was the leader and the residence was where he lived and a location from which he managed the business of the organization.
- [109] However, what was not included in the ITO was the evidence that no support gear was found at the Residence during the August 30, 2005 search. If I permit the defence to amplify the evidence to include this and other evidence, I should also permit the Crown to amplify to include the evidence of the police agent found paragraph 61 of Cpl. Brecknell's ITO.
- [110] Cst. Kim knew the results from the August 30 search of the Residence but candidly acknowledged he did not know the existence of the evidence found at paragraph 61 of Cpl. Brecknell's affidavit. Does this make a difference?
- [111] In my view it does not. If amplification permits the defence to add evidence that the affiant knew or ought to have known, the Crown should be entitled to do the same.
- [112] The evidence of the police agent at paragraph 61 is information the E-PECCANT investigators knew. It was evidence directly relevant to some of the items sought at paragraph (b). It was evidence that a fellow officer involved in the same project included in his ITO for a search warrant executed the same day. It was evidence Cst. Kim ought to have known as well: almost five pages of his ITO is evidence from the agent.
- [113] In conclusion, I find that the warrant was validly issued and permitted the police to search for the items identified at paragraph (b) of Appendix B to the warrant.

VI. MAY 27, 2006 - PROCEEDS OF CRIME SEARCH

- [114] Cpl. Brecknell swore the ITO to obtain three warrants authorizing the RCMP to search three residences for "things" that would afford evidence of two offences: possession of property obtained from the commission of a crime and money laundering.
- [115] The warrants were issued by a Provincial Court Judge to search [Content Redacted], the residence of Nick Manolakos and Lauren Hubbard, and the residence of the applicant.
- [116] The police were permitted to search for the following "things" at the Residence:
- i. Records of a type common to a financial institution including: credit card statements, bank account statements, financial statements, paid cheques, documents supporting electronic funds transfers, purchases of bank drafts or money orders, deposit slips;
 - ii. Personal Tax information including: personal tax returns, T-slips, pay stubs, notice of re-assessment, employment insurance documents, records of employment;

- iii. Business Tax information including: corporate income tax returns, notice of re assessments, collection notices;
 - iv. Personal documents including: wills and testaments, power of attorney, nominee agreements; in the name of Pete MANOLAKOS and Stravoula MANOLAKOS from January 2, 2003 to and including May 26, 2006; and
 - v. Any documents related to the purchase, lease or maintenance of the following vehicles:
 - 1. a 2001 black Volvo sedan bearing British Columbia licence plate ("BCL") 960DSC and Vehicle Identification Number ("VIN") VIN YV1RS53D512078352;
 - 2. a 2000 black Porsche bearing BCL 259ETH and VIN WP0CA2986YU624534;
 - 3. a 2004 gray Infinity GT35 bearing BCL 478EXK and VIN JNKCV54E54M306206;
 - 4. a 2000 black Porsche bearing BCL 449AXH and VIN WP0CB2988YU663428; and
 - 5. a 2006 white Volvo SUV bearing BCL 498ENE and VIN YV4CM592261232201.
- [117] The applicant submits there was insufficient evidence that the "things" sought would be found at the Residence at the time of the search.

Evidence

- [118] Cpl. Brecknell is a member of the Vancouver Integrated Proceeds of Crime section of the RCMP. He became involved in the E-PECCANT investigation in September 2005. The focus of his investigation was the "proceeds of crime". The targets of his investigation were the applicant, Nick Manolakos, Michael Weir, [Content Redacted], Kevin Couture, and Ms. Hubbard.
- [119] In his ITO he provides evidence that includes: the applicant's record for drug trafficking; summaries of statements made to the police by [Content Redacted], Mr. Weir, Mr. Hallas, and the applicant; the results of the search of the Residence on August 30, 2005, and the "office" at 1077 Fairweather Road on December 14, 2005; and the police investigation of drug trafficking at Matina's restaurant and elsewhere by the applicant and others.
- [120] The ITO states the applicant has no bank account or credit cards, only uses cash, and has others pay for things on his behalf in order to avoid any record of him spending money. The ITO discloses no evidence that Stravoula Manolakos had a bank account or credit cards.
- [121] Cpl. Brecknell testified during his cross-examination that despite this evidence, or lack of evidence, he still expected to find the things listed in the warrant because in his experience people keep copies of invoices or statements of their nominees.

- [122] Cpl. Brecknell agreed that he did not believe that the applicant had any legitimate source of income and he did not check with Revenue Canada before the search to determine whether he had ever filed tax returns. He said that in his experience it was uncommon for individuals not to file tax returns.
- [123] He testified that he believed that the vehicle leases would be found in one of the three residences to be searched and that the applicant would keep copies of his nominee's receipts in order to have a record of where his money was going.
- [124] He also testified that does not recall being aware of Rob Pharoah's interview with investigators on September 9, 2005, during which he said that there had been nightly meetings at the "castle when everybody met there and that's when the numbers were being done" but "(n)ow it's not being done at the castle, they're being done [at] the "office" in his boardroom": see page 11 of Exhibit 11.
- [125] The ITO summarizes a number of [Content Redacted] interviews with the police. This evidence includes the following:
- Manolakos is the head of the Greeks and makes all of the decisions;
 - Manolakos tries to remain at arms length within the organization and never touches product. Meetings of the organization occur every Sunday evening at the office but meetings also occur at the Residence;
 - Weir has begun to take care of all of Manolakos' and the Greeks' business arrangements and paperwork, including obtaining loans for Manolakos;
 - Weir and Manolakos started a corporation in Vernon which owns a few businesses;
 - Manolakos paid Weir and another person \$20,000 to purchase a strip club in Vernon and that he paid \$116,000 as a down payment for the club;
 - Manolakos has requested to be paid as a janitor for the strip club and to receive pay checks in order to justify his income;
 - Manolakos paid Weir \$50,000 to purchase a vehicle for him and that the lease payments for vehicles being driven by members of the Greeks are made in cash provided by Manolakos;
 - Manolakos earns approximately \$1,000 to \$2,000 for each 12-hour shift his traffickers work and they work two shifts a day. He makes approximately \$70,000 per month;
 - Manolakos pays all expenses for all members of the Greeks including vehicles, phones, rent, cell phones, meals and liquor. The total is approximately \$10,000 per month;
 - Manolakos has paid for all of the vehicles for the Greeks; and
 - Manolakos has up to 40 employees who are each paid between 3,000 and \$30,000 per month.

Positions of the Parties

- [126] Mr. Ross submits that there was no evidence that the things sought in paragraphs (i) to (iv) even existed. He stresses paragraphs 86-88 of the ITO which state that the applicant had no bank accounts or credit cards, always used cash to purchase goods or services, and had no legitimate employment. He notes there is an absence of evidence concerning Stravoula Manolakos.
- [127] He submits there was no evidence from which the judge could have found that any of the items sought existed at the time of the search in the Residence in the name of the applicant or Stravoula Manolakos.
- [128] Mr. Ross seeks to amplify the ITO. He refers me to additional evidence such as the police interview of a witness (Exhibit 9) where the witness states that the applicant paid cash to "Nico" to pay the bills, that the applicant always dealt in cash, and that the applicant never put anything into his name. He notes that the witness said that the applicant stashed cash in other places. He reminds me of the interview of Mr. Pharoah to which I have already referred.
- [129] With respect to the things listed in (v), the applicant concedes there was evidence concerning two of the vehicles and evidence that the applicant drove a third vehicle. However, he argues that there is no evidence that any of the things sought concerning these vehicles would be found at the Residence at the time of the search. He submits that it is more probable they would be found at Ms. Hubbard's residence.
- [130] Mr. Ross directs me to evidence that [Content Redacted]. He also refers me to Exhibit 9 where a witness said he ceased acting for the organization [Content Redacted]. Mr. Ross emphasizes the evidence that nothing was kept in the applicant's name and submits that if there were any books and records concerning the restaurant, it was more logical that they would be at the restaurant than the Residence.
- [131] Mr. Ross directs me to paragraph 33 of the ITO where Mr. Weir provides evidence that after Ms. Hubbard assumed care of their finances for the Greeks, cash payments for the vehicles came from her, not Stravoula Manolakos. Mr. Ross submits it is more likely that documents regarding the vehicles would be at the Hubbard residence. Further, there is no evidence that any copies of these documents would be at the Residence.
- [132] Concerning the two receipts from Canadian Auto Lease Corp. (Exhibit 14), Mr. Ross submits they are not related to the vehicles identified in paragraph (v). He emphasizes the fact that during the August 30, 2005 search of the Residence, no receipts for these vehicles were found. He submits that paragraphs 125-127 of the ITO support his position that the documents were more likely to be found at the Hubbard residence.
- [133] Mr. Ross summarizes his position as follows:
- the applicant only deals in cash;

- Manolakos distances himself from that cash by giving it to others to bank;
- Manolakos deliberately avoids being linked to financial records; and
- Manolakos deliberately avoids being linked to motor vehicles as well as other property.

- [134] Mr. Jardine acknowledges a drafting error was made in the ITO and the warrant should have read "Pete Manolakos or nominee". However, he argues that it is reasonable to infer that named documents may be found at the Residence in the name of Stravoula Manolakos. He emphasizes that paragraph (iv) includes "nominee agreements" and submits that such agreements do not have to be formal legal documents. They may be nothing more than a few words written on a scrap of paper stating who the real beneficial owner of property is.
- [135] Mr. Jardine argues that there was evidence that Stravoula Manolakos was a nominee with respect to vehicles and reminds me of the evidence of Sgt. Hanrahan that nominees are commonly used by persons attempting to hide their connection to property and money.
- [136] With respect to paragraph (ii), Mr. Jardine directs me to paragraph 30 of the ITO and the evidence that the applicant said that he "made his living working as a cook at Matina's Restaurant and that he did not have any other sources of income". He argues that the issuing judge could reasonably have concluded that information relating to the applicant's employment and tax returns would probably be found at the Residence.
- [137] With respect to the things sought in paragraph (v), Mr. Jardine notes that the vehicles identified as 1, 2, 3 and 5, were acquired after the August 30, 2005 search. He submits there was evidence that the applicant had a beneficial interest in a number of the vehicles. As such, it was probable that documents relating to these vehicles would be at the Residence, particularly given that he drove some of them. He directs me to paragraph 91 where it states that on March 8, 2006, a 2000 Porsche Boxster registered to Stravoula Manolakos was observed at Matina's Restaurant; and that on March 27, 2006, the applicant was driving the black Porsche.
- [138] Mr. Jardine submits there was additional evidence concerning the vehicles in the ITO including intercepted telephone calls between the applicant and [Content Redacted] on February 6 and March 8, 2006.
- [139] The Crown argues that when there are simultaneous searches of three residences, as occurred in the present case, it is not necessary for the police to establish a probability that the items sought will be found at any one residence. What is required is sufficient evidence that the items will be found at one of the three residences.

[140] In reply, Mr. Ross submits that the evidence of Sgt. Hanrahan is of little assistance because it is clear that Mr. Manolakos does not operate on a basis that is common. He also vigorously challenges the Crown's submission concerning simultaneous searches. He poses the theoretical example of simultaneous searches of fifty residences based on the probability that what is sought may be at any one of the fifty. He argues that surely such a search would be unreasonable.

Analysis

[141] The Crown concedes the police made a drafting error in restricting the things sought in paragraphs (i) to (iv) to documents and records in the name of Pete Manolakos and Stravoula Manolakos.

[142] Despite that error was there sufficient evidence to establish that the things sought would provide evidence of the listed offences?

[143] The Crown submits there was, at least for some of the things. They use as an example the existence of nominee agreements between the applicant and Stravoula Manolakos.

[144] The law requires a credibly-based probability that such things existed, not merely possibility or a reasonable suspicion. There was no evidence that such documents ever existed. In my view, there was insufficient evidence that the things sought would probably exist and be found at the Residence. This was an illegal drug trafficking business. The relationship between the applicant and Stravoula Manolakos is mother and son. Given that relationship and given the nature of the business it is improbable that there would be nominee agreements between them.

[145] It is also important to recall that the warrant was issued to permit the police to search for evidence to prove the offences alleged. The things sought must be evidence that could be relevant to proving those offences. Relevance at the investigative stage may have a relatively low threshold but there must be some probative value to the things sought in relation to the offences being investigated.

[146] There was no evidence of any nominee agreements between the applicant and anyone else, including Mr. Weir. I note that the ITO summarizes statements made by Mr. Weir and provides evidence that the applicant was involved in other businesses and had invested a large sum of money into a strip club. However, there was no evidence that any of these businesses or investments were in his name or his mother's name. The evidence, in fact, was that they were not. This is consistent with the evidence that he avoided putting anything into his name or leaving any financial trail behind him.

- [147] I find that the only evidence to support any of the documents listed in paragraphs (i) to (iv), was that the applicant wanted to be paid as a janitor at the strip bar and to receive pay cheques to justify his income; and his statement to the police that he worked at Matina's Restaurant. This provides some evidence to support paragraph (ii). I find the warrant should not have permitted the police to search for the things listed in paragraphs (i), (iii), or (iv).
- [148] I now consider the vehicle documents listed in paragraph (v).
- [149] I have already considered the law concerning simultaneous searches. I am satisfied that the issuing judge could have found sufficient reliable evidence that it was probable that copies of the documents listed in paragraph (v) would be found at one or more of the three residences, including the applicant's.
- [150] I also concluded there was sufficient evidence from which the issuing judge could have been satisfied that these documents or copies of them would be found at the Residence. It is reasonable that the applicant would receive and keep documents or copies of documents relating to vehicles he was paying for, and with some vehicles, also driving. It is reasonable that he would have some written confirmation of the approximately \$10,000 in expenses he was paying every month, some of which related to vehicles.
- [151] In my view, there is a significant difference between the applicant putting vehicles or other assets or expenses into his name and the applicant keeping copies of documents in the name of his nominees.
- [152] I find the warrant was validly issued but should have been limited to search for the things listed in paragraphs (ii) and (v).

VII. CONCLUSION

- [153] I find that all three warrants were validly issued. I find that two of the three warrants authorized the police to search for things or items they should not have been authorized to search for because there was insufficient evidence to support the probability that they would be found in the Residence. I will hear from counsel

concerning what consequences should result from my decision and concerning what evidence was seized and the application of s. 24(2) of the Charter.

"SMART J."

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Prepared on 29 October 2026 · Esheria