

CANADA / JUDGMENT

R. v. Steer

2024 BCSC 2392

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2024 BCSC 2392 R. v. Steer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Steer,

2024 BCSC 2392

Date: 20240510

Docket: 89212-2

Registry: Nanaimo

Rex

v.

Scott Stanley Matthew Steer also known as Scott Steer

and 1215419 B.C. Ltd.

Before: The Honourable Mr Justice Crerar

Oral Ruling on voir dire: validity of search warrant

Counsel for the Crown:

J.A. Cramer

Counsel for the Accused, Scott Stanley Matthew Steer also known as Scott Steer:

T.L. Spettigue

Counsel for the Accused, 1215419 B.C. Ltd.:

A.E. King, K.C.

Place and Date of Hearing:

Nanaimo

May 9, 2024

Place and Date of Judgment:

Nanaimo

May 10, 2024

I. Introduction

- [1] Mr Steer is charged with eight counts alleging illegal harvesting and sale of sea cucumbers, breaches of past court prohibitions against possessing fishing gear and vessels, and illegally employing a foreign national, on dates spanning July 2019 to March 2020.
- [2] The corporate accused is charged with one count alleging the illegal sale of sea cucumbers between September and December 2019. Mr Steer's wife, Melissa Steer (née Larocque), is a registered director of the corporate accused; its corporate registration provides its business address on Catalina Drive in Nanaimo.[1]
- [3] The two accused bring an application under sections 8 and 24(2) of the Charter seeking the exclusion of evidence seized from the Catalina address, and a flat deck truck parked in the driveway of that address, on March 6, 2020, pursuant to a search warrant issued earlier that day. The search warrant was issued based on an information to obtain (the "ITO") sworn the previous day by Trevor Ruelle, a Department of Fisheries & Oceans fishery officer (the "DFO").
- [4] In his ITO, Officer Ruelle stated that he had reasonable grounds to believe that specific evidence of offences would be located at the Catalina address and the flat deck truck: "large blue square garbage cans/bins, fish, fishing gear, invoices in relation to the sale of crab, business cards, fuel receipts, moorage receipts, cell phones, [British Columbia license plate] ML9570, phone records, and ferry receipts."
- [5] The search warrant was executed around 11:20 am. Ms Steer answered the door. Evidence gathered in the search included 12 large blue square garbage bins; fish and fishing gear, including live crab cages, multiple diving suits, industrial-sized dehydrators, dried sea cucumbers, various boxes and bags for sea cucumbers, and multiple numbered vessel plates (new and used); documents pertaining to fishing, including invoices for gear, a bill of sale for a vessel, receipts for moorage, fuel, ferries, a harbour parking permit, and a fishing vessel application; and two cell phones.

II. Facts

- [6] Mr Steer had been arrested three days before the swearing of the ITO. At around 1:30 am on March 2, 2020, after an eight-minute boat pursuit, Mr Steer was arrested on board a fishing vessel in Vancouver harbour. He was found with some 300 illegally caught crabs without a license in a closed area, along with four commercial crab traps. In so doing, Mr Steer also breached a 2016 order of Mr Justice Thompson, which prohibited him, until the year 2038, from being on board a fishing vessel or possessing fishing equipment. Mr Steer was charged and convicted for his involvement in this incident: see *R. v. Steer*, 2021 BCSC 1198.
- [7] The ITO focuses on the circumstances of the March arrest, coupled with a February 2020 incident.
- [8] On February 7, 2020 at 5:01 am, the DFO received a complaint from a tug boat operator that three individuals on an aluminum boat were illegally crabbing in Vancouver harbour under cover of darkness. At 7:00 am, the RCMP received a call from the watchman at the West Vancouver Yacht Club, who reported that he had witnessed three males unload crabs off a boat in wheeled plastic garbage bins. The men offloading the crabs stated that they were from Nanaimo. The watchman helped the men transport the bins to a 1997 Chevrolet flat deck truck, with British Columbia licence plate ML9570. A yacht club security camera caught the activity on video. Based on the security video, DFO Intelligence Officer Reich, who has been involved in several files involving Mr Steer, identified two of the three men: Mr Steer as the boat skipper, and Sammy Williams as a deckhand.

III. Law

- [9] To issue a warrant under s. 487 of the Criminal Code, RSC, 1985, c. C-46, the authorising justice must be satisfied from the ITO that there are reasonable grounds to believe any one of:

- a) anything on or in respect of which an offence has been committed;
- b) anything that will afford evidence of an offence; or
- c) any offence-related property

is in a building, receptacle, or place described in the warrant.

- [10] Search warrants are issued specific to a location. All that is required for a warrant to issue is that the ITO establish a credibly-based probability that the things to be searched for will be found in that particular place: *R. v. Montgomery*, 2016 BCCA 379 at para. 121, leave to appeal to SCC ref'd, 37305 (9 March 2017).
- [11] In *R. v. Bridgen*, 2022 BCCA 429, our Court of Appeal summarises the role of a court in the present circumstances in assessing a facial challenge to a search warrant:

- [2] Since *R. v. Garofoli* [1990] 2 S.C.R. 1421, the "basic test" in Canada for determining the reasonableness of a search warrant under s. 8 of the Charter has been clear. At the issuing stage, the judge must be satisfied by affidavit evidence that there are reasonable and probable grounds to believe that a specified crime has been or is being committed, and that the search sought to be conducted will afford evidence of the crime. "Reasonable grounds" does not require proof -- even proof on a balance of probabilities or a prima facie case. In *R. v. Debot* [1989] 2 S.C.R. 1140 at 1166, it was said that the phrase "reasonable belief" approximates the standard.
- [3] Where the search warrant is later challenged under s. 8 of the Charter, its validity is presumed and the onus is on the accused to show that the search was not reasonable. The reviewing judge does not carry out a review of the authorization de novo and does not substitute his or her view for that of the authorizing judge. Again, the question is whether the issuing judge could have properly authorized the warrant.

[emphasis added]

- [12] The reviewing judge's role is to examine the ITO and determine whether, on the basis of the information contained therein, "a justice of the peace could (not would) have issued the warrant": *R. v. Wilson*, 2011 BCCA 252 at para. 39. A search warrant will be upheld if the reviewing judge is satisfied that there was "at least some evidence that might reasonably be believed on the basis of which the authorization could have issued": *R. v. Araujo*, 2000 SCC 65 at paras. 51-52 (emphasis in original omitted). In other words, the reviewing judge should not set aside the warrant unless, on the whole of the material presented, there was no basis for its issuance: *Wilson* at paras. 37-40; *Araujo* at paras. 50-54.
- [13] The "reasonable grounds" standard is often described as one of "reasonable probability" or "credibly-based probability". The case law is clear, however, that the standard is less than proof on a balance of probabilities or a prima facie case: *Bridgen* at paras. 2, 26; *Montgomery* at paras. 81, 121. The phrase "reasonable belief" also approximates the requisite standard: *R. v. Debot*, [1989] 2 SCR 1140 at 1166 (per Wilson J). The determination of "reasonable grounds" requires a practical, non-technical, and common-sense assessment: *Montgomery* at para. 81; *R. v. Whitaker*, 2008 BCCA 174 at para. 42, leave to appeal to SCC ref'd, 32657 (30 October 2008).
- [14] The reviewing judge is not to assess the evidence piecemeal, but must consider the totality of the circumstances. It is not appropriate to examine each word or paragraph in isolation: "each piece of evidence colours other pieces of evidence and a fuller picture emerges by considering all of the evidence together": *Whitaker* at para. 41. It is on the totality of all of the information within the ITO that the authorisation will stand or fall.

- [15] The reviewing judge should consider that authorising justices are entitled to draw reasonable inferences from the information set out in the ITO. The affiant need not expressly state their belief and need not underline the obvious: *R. v. Vu*, 2011 BCCA 536 at paras. 38-40, *aff'd* 2013 SCC 60 at para. 16.

IV. Discussion and decision

A. The totality of the evidence establishes reasonable grounds for issuance of the warrant

- [16] I am satisfied that it cannot be said that the grounds set out in the ITO, considered as a whole, establish no reasonable basis upon which the search warrant could have been issued. Rather, the totality of the ITO disclosed abundant grounds to believe that Mr Steer was engaged in illegal fishing; and that evidence of those activities would be found at the Catalina residence and the flat deck truck. The ITO sets out more than ample evidence on which the judicial justice could have issued the warrant.
- [17] The introduction and the facts sections, above, set out five linchpins connecting evidence of illegal activity to Mr Steer, to the Catalina residence, to the flat deck truck, and to each other: Ms Steer herself, the corporate defendant, the flat deck truck, the boat, and the wheeled blue plastic garbage bins. The ITO sets out five additional linchpins connecting the evidence: a boat trailer, a Ford Flex, a Lincoln Navigator, Mr Steer's past illegal fishing activity, and Mr Williams.
- [18] Multiple points of strong evidence link both accused to the Catalina residence. Mr and Ms Steer both provide the Catalina Drive residence address for their driver's licences. In 2017, Mr Steer provided that address as his residential address to his probation officer. The ITO cites a business receipt issued to Mr Steer at that address.
- [19] Again, the corporate defendant's corporate registrations provide the Catalina address, as well as listing Ms Steer as a director of that company.
- [20] Turning to the vehicles, the corporate defendant is the registered owner of the flat deck truck registered to the Catalina address. The flat deck truck bears the same licence plate as the flat deck truck onto which Mr Steer and Mr Williams offloaded the wheeled garbage bins at the West Vancouver Yacht Club: ML9570. By reference to his driver's license number, Mr Steer is listed as the primary operator of the flat deck truck. This same information was provided when a new license plate was issued for the flat deck truck on February 10, at the request of Ms Steer.
- [21] Ms Steer is the registered owner of the Ford Flex and the Lincoln Navigator, providing the Catalina residence address.
- [22] Between February 17 and March 5, on seven occasions, one or both of the flat deck truck and the Ford Flex were spotted parked at the Catalina residence.

- [23] Between February 15 and 29, 2020, on ten occasions, a combination of the flat deck truck, the trailer, the boat, and the Navigator were seen in the parking lot at a pub located 2.3 kilometres from the Catalina residence. The ITO includes a February 25, 2020 photograph of the boat mounted on the trailer hooked up to the Navigator, in the pub parking lot.
- [24] Finally, in addition to the use of the flat deck truck for offloading the crabs on February 7 at the West Vancouver Yacht Club, the flat deck truck was also seen at roughly 6:45 am on February 19 up the road from the yacht club: two Indigenous persons were seen adjusting the tie-down straps on wheeled garbage bins on that truck.
- [25] Turning to the boat, the man identified as Mr Steer used what would appear to be the same aluminum boat in the February 7 and March 2 incidents: a boat that matches the boat mounted on the trailer hooked up to the Navigator in the February 25 photograph. The boat has a single headlamp light, along with a davit (a hauling device for a dinghy or a trap) on the starboard side.
- [26] On February 6, 2020 (the day before the West Vancouver Yacht Club incident), two officers (including Officer Ruelle himself) had observed an aluminum boat moored at the Brechin boat launch in Nanaimo. A photograph in the ITO shows that it is almost certainly the same boat mounted on the trailer hooked up to the Navigator in the February 25 photograph. Officer Ruelle describes "the vessel style is that of a small operation commercial crabber." He also noted the presence of "numerous large, blue, square garbage cans/bins lying flat on the stern deck - - the size of which indicated quantities of fish far in excess of recreational allotments [that] might be expected aboard the vessel." The garbage bins are the same colour, shape, and size of the ones used to offload crabs from the aluminum boat to the flat deck truck on February 7 at the West Vancouver Yacht Club, as shown in the surveillance videos.
- [27] I turn to the blue plastic wheeled garbage bins. In addition to their appearance on February 6 at the Brechin boat launch; on February 7, at the West Vancouver Yacht Club, with crab offloading to the flat deck truck; and on February 19, on the flat deck truck seen near the West Vancouver Yacht Club, a DFO officer on February 17 observed three garbage bins of the same shape and colour in front of the Catalina residence. In the ITO, Officer Ruelle sets out that in his 25 years of experience with commercial crab and recreational fisheries, he had never seen garbage bins used to transport crabs; he stated his belief that the solid opaque garbage bins were used to surreptitiously hide the crabs from view.
- [28] I turn to Mr Steer's history of illegal fishing recited in the ITO. While evidence of bad character or prior criminal misconduct may be excluded at trial as prejudicial or irrelevant, past criminal misconduct can support the grounds for the issuance of a warrant: *Debot* at 1169 (per Wilson J); *R. v. Loewen*, 2016 BCCA 351 at para. 51. The pertinence of past criminal conduct in supporting reasonable grounds depends on its similarity to the criminal activity under investigation and the age of the past criminal conduct: *R. v. MacDonald*, 2012 ONCA 244 at paras. 22-23.

- [29] The ITO sets out that Mr Steer had a long and persistent history of commercial fisheries offences, particularly those committed, as alleged with respect to the February 7 and March 2 incidents, under cover of night. He was also subject to multiple fishing prohibitions:
- a) Between July and December 2010, Mr Steer illegally caught thousands of pounds of halibut and rockfish at night. He was sentenced to six months imprisonment and a ten-year fisheries prohibition. In his reasons, Gouge PCJ noted that Mr Steer had been a commercial fisherman his entire life, and that he had no other work skills or experience.
 - b) In September 2013, Mr Steer caught over a thousand pounds of crab in Vancouver harbour at night. He brought them to Victoria by truck via BC Ferries to sell. He was sentenced to four months imprisonment. Harvey PCJ noted that "Mr Steer has repeatedly shown a callous disregard for any moral responsibility to both other law-abiding fishers and the rules in place to protect an important and vulnerable resource".
 - c) In April 2014, Mr Steer leased a crew vessel and fitted it with crab fishing gear, contrary to his prohibition order. Mr Justice Thompson sentenced him to 80 days imprisonment and imposed an additional fisheries prohibition until 2038.
 - d) In March 2015, Mr Steer leased a fishing vessel and obtained a prawn fishing licence, contrary to his fishing prohibition order. The leasing documents were put under the name of Sammy Williams. In July 2015, Mr Steer was observed at the Vancouver Marina hitching a fishing vessel to a truck. The vessel and truck contained crab fishing gear and recent receipts for crab sales in the name of Mr Williams. Fishery officers seized an iPad from the vehicle. It contained navigation software and records of navigation in Vancouver harbour. Fishery officers located commercial crab traps in Vancouver harbour fishing large amounts of crab. Mr Steer pleaded guilty to breaching his 10-year Fisheries Act prohibition. On September 6, 2016, Gunnell PCJ sentenced him to 60 days jail, an 18-year fishing prohibition, and forfeiture of a vessel and fishing gear.
 - e) In April 2016, Mr Steer was sentenced to 21 days in jail for breaching his recognizance by being on a vessel.
 - f) In September 2016, Mr Steer was sentenced to 60 days jail and an 18-year fishing prohibition for breaching a Fisheries Act prohibition. Mr Steer had leased a fishing vessel and licence in the name of Mr Williams and was observed hitching a fishing vessel to a truck. The truck contained crab fishing gear and navigation equipment with records of navigation in Vancouver harbour. DFO officers located commercial crab traps in Vancouver harbour fishing large amounts of crab.
- [30] The circumstances of the February 7 and March 2 incidents provided further, recent, and abundant grounds to believe that Mr Steer was involved in illegal crab fishing at the time the warrant was issued. Specifically, there were reasonable grounds to believe that Mr Steer had committed the following offences:

- a) breaching his prohibition order by being on board a fishing vessel;
- b) breaching his prohibition order by possessing fishing gear;
- c) fishing without a licence;
- d) fishing during a closed time; and
- e) unlawfully possessing fish.

[31] This lengthy and recent history of fishing-related violations leads to the final linchpin: Sammy Williams, who was arrested with Mr Steer on March 2. Mr Williams was also positively identified, along with Mr Steer, in offloading the crabs in the wheeled garbage bins onto the flat deck truck on February 7. As set out above, Mr Steer's involvement with Mr Williams dates back to at least March 2015 and September 2016. In 2015, Mr Williams gave a statement to DFO officers. He described their relationship, and confirmed that the two of them would fish crab at night in Vancouver harbour. He also told the DFO that everything was "going through" Mr Steer's then-girlfriend, now wife, while Mr Steer was in jail.

B. The defence's arguments

[32] Before concluding, I will briefly address the defence's submissions.

[33] The defence argued that while a case could be made for the issuance of a warrant to search the flat deck truck, the contents of the ITO were insufficient to ground a warrant to perform an intrusive search of a personal residence.

[34] I have just recited the multiple connections of the boat and vehicles alleged to have been directly used in the illegal crab fishing, to the Catalina residence. Further, the quantity of crabs and the commercial-sized equipment seized on March 2, coupled with Mr Steer's past history, confirmed that he was likely undertaking a commercial crab harvest, for commercial sale: such sales would generate invoices, receipts, and other business records. It was also reasonable to conclude that fishing gear and other fishing-related materials would be stored at the residence. Further, fishery officers had previously found similar evidence of fisheries offences in Mr Steer's residence and vehicle. In January 2011, Mr Ruelle himself executed a search warrant at Mr Steer's previous residence in Lantzville, gathering evidence with respect to illegal halibut and groundfish fishing, including fish, fishing gear, invoices, bank statements, handwritten notes, and ferry receipts: the very sorts of evidence set out in the ITO.

[35] The defence conducted a diligent review of the ITO, noting areas where specific pieces of evidence were incomplete or unclear, or where an alternative inference could be drawn from the recited events or evidence. Defence questions the identification of the blue plastic square wheeled garbage bins at and near the West Vancouver Yacht Club, at the Brechin boat launch, and at the Catalina residence, as one and the same: everyone owns garbage bins. Defence also conjectures that Mr Williams's statement to DFO officers should be doubted and excluded: it is not directly corroborated, and Mr Williams, as a co-accused, would have

had motive to lie.

- [36] As a high-level response, none of these observations would have deprived the judicial justice of the ability to conclude that the combined totality of the evidence set out in the ITO provided reasonable and probable grounds to believe that a specific crime had been committed, and that the search sought would afford evidence of the crime. As set out, there are multiple interconnecting pieces of evidence linking Mr Steer's illegal fishing activity to the Catalina residence, to the boat, to the flat deck truck, and to the two vehicles, and with each other.
- [37] Defence noted that the night watchman at the West Vancouver Yacht Club was not able to identify Mr Steer based on a police photograph, and noted that there is no evidence as to his credibility or reliability. The evidence of the night watchman, however, is superfluous, as much of what he witnessed was in fact caught on videotape, allowing for a positive identification of Mr Steer at the scene by a DFO officer familiar with Mr Steer from past investigations.
- [38] Defence notes that on February 10, three days after Mr Steer was spotted at the West Vancouver Yacht Club unloading crabs onto the flat deck truck, Ms Steer reported to police that the licence plate for that flat deck truck had been stolen. Defence conjectures that the stolen plate might have been placed on another flat deck truck. I agree with the Crown that this argument takes an overly atomistic view of the contents of the ITO, and, in any case, could more readily suggest the inference that Ms Steer claimed that the licence plate had been stolen in light of Mr Steer's encounter with the West Vancouver Yacht Club night watchman three days earlier.
- [39] Defence questioned the ability of the affiant and cited officers to identify the boat and the accused, as defence questions their ability to identify the garbage bins. They note that the affiant defines "the vessel" multiple times, but uses it to refer to the aluminum boat used in the February 7 and March 2 incidents, and observed at the Brechin boat launch, in the pub parking lot, and near the West Vancouver Yacht Club, indicating that the boats are one and the same. Defence also notes that in the description of the West Vancouver Yacht Club surveillance videos, DFO Officer Reich expressly notes that Mr Williams's face was visible, and makes no similar notation with respect to Mr Steer, but nonetheless identifies both of them.
- [40] These arguments raise two issues: affiant expertise and ITO drafting.
- [41] With respect to the first, both Officer Ruelle and Officer Maestrello have 25 years' experience as fishery officers. Along with Officer Reich, they have many years of specific investigations of Mr Steer himself: their identifications of the boat and Mr Steer are based on considerable relevant experience. The affiant itemised specific physical aspects of the aluminum boat seen on the different occasions, as set out above, and notes that it was an "unusual" craft. In evaluating the existence of reasonable grounds for the issuance of a search warrant, the issuing justice is entitled to view the information presented in the ITO through the lens of

the experience and knowledge of the affiant. Observations that may lack significance to the untrained eye may be highly significant to trained investigators: R. v. Jacobson (2006), 207 CCC (3d) 270 (ONCA) at para. 22; R. v. Le; R. v. Nguyen; R. v. Tran, 2006 BCCA 298 at para. 17, leave to appeal to SCC ref'd, 31553 (16 November 2006).

- [42] With respect to the second issue, in reviewing the decision of the issuing justice, the reviewing court should consider that, in most cases, the information to obtain was prepared by a peace officer without the benefit of legal advice. The quality expected of an affiant is not that of a legal draftsman: Montgomery at para. 117. Further, a search warrant is an investigative tool. Trial standards of evidence should not be imposed onto the review of the grounds for belief: Loewen at paras. 47-51.
- [43] Defence argues that two paragraphs at the end of the ITO, under the heading of "Things to be searched for", are impermissible conclusory statements:
64. I believe that I will find items with respect to illegal crabbing at 5361 Catalina Drive, Nanaimo, British Columbia because of the following reasonable and probable grounds:
- a. The blue square garbage cans/bins were observed at his residence, on 'The Vessel' and seen during the illegal crab off load at the February 7, 2020 at the West Vancouver Yacht Club
 - b. STEER is back illegal crabbing again, companies are required by law to provide paperwork (invoices, fish slips, receipts) when purchasing crabs
 - c. A previous Search Warrant was executed at STEER's residence, at a different address and produced several items mentioned above
 - d. STEER is operating a business at this residence and businesses are required to keep records
 - e. This is the business address listed for 'The Flatdeck' with STEER as the Principle Operator.
 - f. STEER caught a commercial amount of crabs that were destined for sale.
65. I believe that I will find items with respect to illegal crabbing in 'The Flatdeck' parked in the driveway at 5361 Catalina Drive, Nanaimo, British Columbia because of the following reasonable and probable grounds:
- a. 'The Flatdeck' was observed being loaded with illegal crabs in blue square garbage cans/bins on February 7, 2020 at the West Vancouver yacht Club by watchman Bryan McCue
 - b. During past investigations, consent vehicle searches invoices, receipts and paperwork with respect to illegal crabbing has been found.
- [44] These statements are not conclusory statements based on no evidence--the subject of jurisprudential criticism--but rather conclusion statements summarising the interconnected abundance of evidence set out in the ITO, as partially summarised above in these reasons.

[45] I conclude by addressing the single case relied upon by the defence, *R. v. Sunner*, 2017 BCSC 2445, where the Court found that the warrant could not properly have been issued to search a residence that police speculated might have been used as a "drug stash house" by the accused. There was only tenuous evidence linking Mr Sunner to the house, and no confirmed evidence that he resided in the house, apart from occasional visits. While associates of Mr Sunner were observed conducting what were likely drug transactions near the house, Mr Sunner's putative dial-a-dope transactions were entirely off-site. The ITO thus failed to present a credibly-based probability that evidence of Mr Sunner's illegal activities would be found in that residence: paras. 39, 41. Sunner thus stands in marked contrast to the multiple pieces of evidence here that Mr and Ms Steer reside at Catalina Drive, which also serves as the registered records office for the corporate defendant, and which has multiple ties to the boat, the vehicles, and wheeled garbage bins directly involved in the offences alleged in the ITO.

[46] The application is dismissed.

"Crerar J"

[1] The ITO makes two references to the correct numbered corporation, and a single reference to 1215418 B.C. Ltd. The Crown responsibly flags this anomaly. I am satisfied, on the whole of the evidence, that the issuing judicial justice could consider this outlier to have been a typographic error.

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