Citation: *R. v. Grini-Blanchard*, 2022 YKTC 35

Date: 20220325
Docket: 20-00597
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Seidemann III

REGINA

v.

MELODY ESTER GRINI-BLANCHARD

Appearances:
Benjamin Eberhard — Counsel for the Crown
Jennifer Budgell — Counsel for the Defence

REASONS FOR JUDGMENT

[1] SEIDEMANN III, T.C.J. (Oral): Ms. Grini-Blanchard is charged with possession of the proceeds of crime and possession of prohibited weapons. The basis of these charges is a significant sum of cash and an over-capacity magazine found upon a search of her residence and an over-capacity magazine and a conducted energy device found upon a search of a storage locker rented by her.

[2] The defence seeks exclusion of these items on the basis that they were all seized in violation of her right to be free from unreasonable search and seizure pursuant to s. 8 of the *Canadian Charter of Rights and Freedoms* (the *"Charter"*). All of these items were seized in the execution of search warrants, in the case of the residence,

pursuant to the *Controlled Drugs and Substances Act*, S.C. 1996. c. 19, and, in the case of the storage locker, pursuant to both the *Criminal Code* and the *Controlled Drugs and Substances Act*.

[3] After cross-examination of the affiant of the Informations to Obtain all of the warrants, the Crown has conceded that the items were seized in violation of the defendant's *Charter* rights. The issue for me at this time is whether or not the items should be excluded from evidence pursuant to s. 24 of the *Charter*.

[4] At the conclusion of submissions, I advised counsel that I was satisfied that the items seized from the storage locker would be excluded but would consider further the disposition of the items seized from the residence. This is my decision on those items and the reasons for the decision on the storage locker.

[5] The police were investigating what they considered to be a significant organization trafficking cocaine in the Whitehorse area. This investigation spanned almost four years and the Informations to Obtain include information from that whole time period. They were over 90 pages in length, with the Information to Obtain the warrants for the storage locker duplicating the Information to Obtain for the residence, with the inclusion of information about the items found when the warrant for the residence and several other warrants were executed and the police first learned about the existence of the storage locker.

[6] The principal of this organization was one Levy Blanchard, the defendant's brother. The police believed that the defendant assisted her brother by trafficking,

organizing other traffickers, and possessing on a regular basis the cell phone by which purchasers made contact with the organization.

[7] The investigation had received ongoing information about this organization and the defendant's involvement therein from several confidential informants. The information received from the confidential informants was corroborated in several aspects. Details of the phone numbers used by the group for contact by purchasers, several details of the operation of the organization, and the identity of several others involved in sales were corroborated by surveillance and/or purchases by undercover officers.

[8] Trafficking by the defendant was never specifically corroborated and, with one exception, conduct by her consistent with trafficking had not been observed for several years prior to the execution of the search warrants. Tracking of the phone used by purchasers to contact the organization did show that, on some occasions, it appeared to track the movement of the defendant or be located in the vicinity of her residence.

[9] In order to obtain a search warrant, the issuing Justice must be satisfied that an offence has been committed and that something which will afford evidence of that offence will be found at the location to be searched at the time the warrant is issued. The Justice does not have to be satisfied beyond a reasonable doubt, but must be satisfied that there are "reasonable and probable grounds to believe". This has been interpreted to mean that it does not even have to be more probable than not, but must mean that it is at least close to as probable as not.

[10] The first warrant issued in this case alleged the offence of possession of a controlled substance for the purpose of trafficking. It alleged that there were grounds for believing that "cocaine, equipment, containers, devices, materials, substances, and paraphernalia used to measure, package, and transport the substance. This will also include scales, plastic packaging, utensils, and cutting substances. Also notes, address books, notebooks, score sheets, record of telephone numbers, cellular phones, receipts, cash, cash counters, financial institution documents, and any documents related to the purchase, sale or distribution of the said substance in electronic format or otherwise" would be found in the residence and a vehicle owned by the defendant.

[11] In fact, the affiant acknowledged that the only one of those items that the investigation had ever confirmed was likely located in the residence or the specific vehicle at any particular time, was a cellular phone used by purchasers to contact the organization. The confidential informants had never, at least as disclosed in the Information to Obtain, indicated that they had seen any of the other items in the residence or even been in the residence. The affiant acknowledged that he was relying on a tendency of drug traffickers to possess many of these items, and he was satisfied the defendant was a drug trafficker.

[12] Although the Information to Obtain made out a good case that there was a drug trafficking organization and that the defendant may have had some connection to that organization, it entirely failed to make out a case that there was a probability that the items set out in the warrant would be at the location specified at the time the warrant was granted or was to be executed.

[13] The affiant testified that he dropped off two other Informations to Obtain search warrants at the same time, and the second Information to Obtain indicates that a total of 14 warrants were executed contemporaneously with the warrant against the defendant. I have sympathy for the issuing Justice, who must have been dealing with several other equally challenging requests at the same time, but in this case, the Information to Obtain clearly fails to meet the appropriate test and the warrant ought not to have been issued. I am able to say this without dealing with a number of issues with the content of the Information to Obtain that are relevant to whether the evidence ought to be excluded. This is purely and simply that there was no case made out that the items sought would be at the location identified at the time indicated.

[14] As I said previously, the warrants for the storage locker were issued on the basis of an Information to Obtain that duplicated the prior Information with the addition of the results of the various searches that had been conducted. The only really relevant fact was that, during the search of the residence, the police found a contract for the rental of the storage locker. Until that time, the police were entirely unaware that the storage locker existed. No surveillance had connected to it, no confidential informant had referred to it. The discovery of its existence did not confer any relevance to it without something to, in some way, connect it to criminal activity. There was absolutely no basis for requesting a warrant or conducting a search of it. Clearly, the warrants for its search were not authorized by law and ought not to have been issued.

[15] Since none of the warrants were properly issued, the searches were, in each case, a violation of the defendant's rights pursuant to s. 8 of the *Charter*. The defendant

requests in each case the exclusion from evidence of the results of those searches pursuant to s. 24(2) of the *Charter*.

[16] The test I am to apply in that case is set out in *R. v. Grant*, 2009 SCC 32. That requires that I consider three factors: the seriousness of the *Charter*-infringing state conduct; the impact of the breach on the *Charter*-protected interests of the accused, and society's interest in the adjudication of the case on its merits.

[17] Dealing firstly with the items seized from the storage unit, I advised counsel at the conclusion of submissions that I would be ordering the exclusion of those items. In that instance, the police gave absolutely no thought to the appropriateness of seeking a search of those premises. They discovered their existence with absolutely nothing to indicate any connection to criminality other than that they were rented by a person the police believed to be a drug trafficker. They made no attempt in the new Information to Obtain to show any connection between those premises and criminal activity. It was a knee-jerk reaction, totally without justification. It was done after the search of the residence and vehicle had already totally failed to reveal any of the items sought on the warrant for their search. It was a desperate attempt to try and get something on the defendant.

[18] Although the defendant's privacy interests in a storage locker would be less than in her residence, it was still violated without good reason. The charges, though not minor, are not particularly serious. I am mindful that the exclusion of this evidence will render the prosecution of those two counts difficult or impossible. In the circumstances, I am fully satisfied that the admission of this evidence without any shred of a basis for

the search would bring the administration of justice into disrepute and justify its exclusion.

[19] Dealing with the search of the residence, the defendant says that the actions of the affiant in this case show a disregard for the obligations on an applicant for a warrant and I should consider this to be a serious breach. The defendant points to several areas which she says are either wilfully misleading of the Justice or show significant carelessness with regard to the duty on an affiant to give full and clear disclosure.

[20] There are many pages of the Information to Obtain which detail activities of the investigation, including many purchases of drugs by undercover operators, which have nothing to do with the defendant. The affiant says that these are included to show the scope of the organization, but acknowledged that he did not take steps to make that clear and to confirm that they did not directly involve the defendant.

[21] The affiant included details of an incident when the defendant was arrested and the charges later stayed. He could not really give any good reason for that inclusion. He included an incident reported by another officer where he believed he witnessed a drug transaction involving the defendant. There was video of that incident and the officer referred to the video in the Information to Obtain. I have viewed the video, and although that is one possible interpretation of what it shows, it is not particularly supportive of that interpretation and the Information to Obtain leaves the impression that the officer's interpretation is clearly confirmed by the video, when it was not.

[22] The affiant confirmed in his cross-examination that he did not see a necessity to set out a basis why the items he thought should be searched for would be at the

location at the specific time of the search. He clearly acknowledged that his belief in their presence at the residence was not based on any specific information, but on general practices that he attributed to drug traffickers.

[23] What causes me the most concern is several statements made by the affiant in what is titled the "summary" in the Information to Obtain. Two of those statements in particular, in my opinion, were seriously misleading to the Justice.

[24] In para. 148, the affiant says:

> …Based on the tracking of cell phones and locating vehicles registered to or driven by Levy BLANCHARD, Melody GRINI-BLANCHARD, Celia WRIGHT, Patrick GRINI, Violet BLANCHARD and other associates, police have witnessed on multiple occasions these vehicles conducting short duration meets consistent with drug trafficking.

[25] Based on other content of the Information to Obtain, that statement, so far as it goes, is true, but seriously misleading as it relates to the defendant. The Information to Obtain details one occasion only when the defendant was observed to have such meets, and that was in March 2018, two and one-half years before the search.

[26] In para. 149, the affiant says:

> I believe Melody GRINI-BLANCHARD operates the dial-a-dope phone for the group during the day and turns the phone and product over to other dealers for the night. Surveillance, coupled with TDR data and tracker analysis, has shown Melody GRINI-BLANCHARD is more than likely in possession of the drug group's dial-a-dope line during the day on weekdays.

[27] However, a review of the surveillance material included in the Information to Obtain for September and October preceding the issuance of the warrant shows that,

on many days, surveillance did not confirm that statement. At best, there was a good possibility that the defendant might have the phone during the day. The affiant acknowledged that the statement was probably not accurate and could be misleading.

[28] Finally, in the paragraph headed “Application”, para. 151, the affiant says:

> I base my belief on the following as set out in this information to obtain:
>
> …
>
> (c) surveillance has also witnessed short duration meets consistent with drug trafficking at the street level by Melody GRINI-BLANCHARD.

Again, he does not reference that the only one such occasion was over two and one-half years earlier. There were no multiple meets as described in this paragraph.

[29] I am not prepared to say that the affiant deliberately attempted to mislead the Justice. However, the areas I have pointed out are about as misleading as is possible without intent. I consider this *Charter*-breaching conduct to be at the most serious level possible without deliberate misleading. If it is careless, it is at the top end of careless.

[30] The search was of the defendant’s residence. Many cases have held that this is one of the most protected interests. This was clearly a serious breach of the defendant’s rights. As with the storage locker, I am aware that the exclusion of the evidence found in the search of the residence will likely be fatal to the Crown’s case on two counts. As defendant’s counsel have pointed out, where the other two considerations are significantly in favour of exclusion, it is only in the most extreme of cases that this consideration will prevail to result in the admission of evidence.

[31] Again, these two counts are not minor, but in the larger scheme of things, they do not represent huge risks to public safety or good order. None of the items seized were the items that the police were primarily seeking. The cash was referenced in the warrant as an addition, but it was not what they had expressed an expectation of finding.

[32] Considering all of this, I am satisfied that to admit the evidence, given the specific shortfalls I have identified in the information given to the issuing Justice, would bring the administration of justice into disrepute and all evidence seized pursuant to the warrant for the residence and vehicle will also be excluded.

[33] MR. EBERHARD: I am happy to proceed in that fashion so if we were to commence the trial today, the Crown would call no evidence.

[34] THE COURT: That's fine. We can proceed on that basis. And does the defence have a motion on that?

[35] MS. BUDGELL: Yes, please, Your Honour. I would ask that the charges be dismissed.

[36] THE COURT: The Crown having called no evidence, then, I would, on all four counts, acquit the accused.

_____

SEIDEMANN III T.C. J.