

Citation: *R. v. Blanchard*, 2025 YKTC 42

Date: 20250731
Docket: 20-00674A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

LEVY FREDRICK MICHEAS BLANCHARD
AND CELIA WRIGHT

Appearances:
Kathryn Laurie
Vincent Larochelle
Mark Chandler

Counsel for the Crown
Counsel for Levy Blanchard
Counsel for Celia Wright

RULING ON *CHARTER* APPLICATION

[1] Mr. Levy Blanchard and Ms. Celia Wright are co-accused in relation to charges contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, (the “*CDSA*”) and s. 354(1)(a) of the *Criminal Code of Canada* (the “*Code*”).

Mr. Blanchard also faces 12 counts contrary to the following sections of the *Code*: ss. 86(1), 86(2) x 2, 88, 91(1), 91(2), 92(2) x 2, 95(a), 96(2), 354(1)(b) x 2, and one count contrary to s. 4(1) of the *CDSA*. The charges all arise from evidence obtained through the execution of three search warrants at the co-accused’s shared residential address, leading to the discovery of cocaine, cash, and firearms.

Application

[2] Mr. Blanchard and Ms. Wright bring an application seeking the exclusion of this evidence, pursuant to s. 24(2) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), on the basis that their rights to be free from unreasonable search and seizure pursuant to s. 8 of the *Charter* were breached. This ruling addresses only the s. 8 argument, counsel having reserved argument on s. 24(2).

[3] The applicants’ position is that the Information to Obtain (the “ITO”) sworn by the RCMP affiant, Cst. Gillis, fails to provide a sufficient basis upon which the warrants could issue and that the resulting warrants were invalid. The Crown argues that the ITO provides ample information to support issuance of the warrants.

Law

[4] My review of the warrants is guided by the following well-established legal principles. Warrants are presumptively valid (*R. v. Pires*; *R. v. Lising*, 2005 SCC 66, at para. 30). On the balance of probabilities, the onus of demonstrating invalidity falls on the party asserting it; that is, that the minimum standard required for authorizing the search and seizure was not established in the ITO (*R. v. Crevier*, 2015 ONCA 619, at para. 66). The standard is whether there were reasonable grounds to believe that the statutory criteria have been met; generally speaking, the statutory criteria are that an offence had been committed and that evidence of the offence will be found at the specified time and place of the search.

[5] The threshold for the issuance of a judicial authorization is low. “Reasonable and probable grounds” means a “credibly based probability”. It does not mean “proof beyond a reasonable doubt” or even the establishment of a *prima facie* case. The required reasonable grounds exist when “credibly-based probability replaces suspicion” (*R. v. Morelli*, 2010 SCC 8, at paras. 127 and 128). The assessment of facts relied upon to establish reasonable and probable grounds is to be made on a practical, non-technical and common sense basis (*R. v. Sanchez*, 1994 CanLII 5271 (ON SC), at p. 367). In assessing the grounds set out in an ITO, both the issuing judge and the reviewing judge are entitled to draw reasonable inferences from the stated facts and an affiant is not required to underline the obvious (*Sanchez*, pp. 364 to 367).

[6] As the reviewing judge, I am to apply a deferential standard of review (*R. v. Vu*, 2013 SCC 60, at para. 16). I am not to substitute my view for that of the issuing judge or re-weigh the evidence. If, based on the record before the issuing judge, I conclude that the issuing judge *could* have granted the warrant, I should not interfere (*R. v. Garofoli*, [1990] 2 S.C.R. 1421, at para. 56). I am to determine whether there was “any basis” upon which the authorizing judge *could* be satisfied that the relevant statutory preconditions existed (*Pires*, at para. 30). Otherwise said, the question is simply whether there was at least some evidence that might reasonably be believed upon which the authorization could have issued (*R. v. Araujo*, 2000 SCC 65, at para. 51).

Facial Challenge

[7] Mr. Blanchard and Ms. Wright bring a facial challenge to the warrants. They argue that, on its face, the ITO does not contain sufficient information to support the warrants. A facial challenge to a warrant attacks the sufficiency of the ITO based only on the information it contains. The record is not enlarged or amplified by any additional evidence (*Araujo*, at paras. 19, 36, 40, and 50; *R. v. Sadikov*, 2014 ONCA 72, at para. 37). For a facial challenge to succeed, the ITO must disclose no basis upon which the issuing judge could have found that the statutory criteria for granting the warrant were met.

Overview of ITO

[8] All three warrants flow from the same ITO. At 158 pages, the ITO describes a multi-year investigation, beginning in 2017, that the Whitehorse RCMP conducted into an alleged drug trafficking organization. Among others, the applicants were targets of this investigation. The RCMP gained information about what they identified as a “drug group” through four confidential informants, crime stoppers tips, surveillance, undercover operations, arrests of buyers and street level dealers, and various types of judicial authorizations. Relying on information gleaned from these investigative techniques, the RCMP came to believe that the “drug group” had street level dealers working in shifts, sharing cell phones and vehicles, and re-loading product at various locations. The RCMP viewed Mr. Blanchard as having a leadership role in the “drug group”.

[9] The ITO also contains information about an investigation conducted by Canada Revenue Agency (the “CRA”) into Mr. Blanchard’s alleged unreported income over the years 2013-2018. Based on a net worth analysis, that investigation led the RCMP affiant to believe that Mr. Blanchard had significant unreported income from an illicit source and had committed offences under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.).

[10] Of the three warrants at issue in this application, two were made pursuant to s. 487 of the *Code*, the third pursuant to s. 11 of the *CDSA*. The tests for a search warrant under s. 487 of the *Code* and s. 11 of the *CDSA* are the same (*R. v. Law*, 2002 BCCA 594, at paras. 6 and 7).

Issues

[11] As noted above, in reviewing the ITO, I must be satisfied that the issuing judge *could* have issued the warrant on the basis that the statutory criteria were met. In short, the ITO must provide reasonable grounds to believe that the offences alleged have been committed, that there are reasonable grounds to believe that the things searched for exist and are at the location to be searched at the time of the search, and that the things searched for will afford evidence of the offences.

[12] This ITO, like many others, relies on information provided by confidential informants (“CIs”) and Crime Stoppers Tipsters throughout the investigation. The approach to analyzing such information requires an assessment of the three “C’s” – namely, was the information provided credible, compelling, and corroborated (*R. v. Debot*, [1989] 2 SCR 1140, at para. 52) The totality of circumstances is to be considered, as weaknesses in one area may be compensated by strengths in the other

two. In this case, key information provided by the informants/tipsters includes the five dial-a-dope phone numbers that were tracked during the investigation. Some overlapping information was provided by the various CIs and tipsters, supporting a finding that the information from each is more reliable. Much of the information was corroborated through undercover operations and included successful drug purchases and extensive surveillance leading to observations consistent with drug trafficking. The extent to which the information was corroborated lends significant assurance as to its reliability.

Does the ITO establish reasonable grounds to believe that the offences were committed?

[13] As the reviewing judge, I must determine whether the ITO sets out reliable evidence that might reasonably be believed upon which the warrants could have issued. I find that it does. The evidence presented in the ITO was sufficient to provide the issuing judge with reasonable grounds to believe that the offences were committed.

[14] The ITO makes a strong case that Mr. Blanchard and, to a lesser extent, Ms. Wright, were connected to and involved with a drug trafficking organization in some capacity over a period of years. Strengthening the somewhat limited information provided by confidential informants and Crime Stoppers Tipsters identifying Mr. Blanchard as a person who runs a “dial-a-dope” operation selling cocaine and crack cocaine in Whitehorse, the evidence supporting the existence of reasonable grounds to believe that an offence has been committed includes:

- RCMP surveillance of persons alleged to be street level traffickers with demonstrated connections to Mr. Blanchard conducting “short meet” transactions consistent with drug trafficking;
- corroboration of dial-a-dope numbers provided by confidential informants/Crime Stoppers Tipsters by undercover RCMP investigations and arrests;
- Transmission Data Recorder (“TDR”) data showing numerous interactions between Mr. Blanchard’s cell phone and various confirmed dial-a-dope phones;
- involvement of vehicles registered to both Mr. Blanchard and Ms. Wright – and both of their mothers - in activities consistent with drug trafficking;
- undercover RCMP purchases of drugs from dial-a-dope phones connected with the alleged drug trafficking organization;
- detention/arrests of both buyers and street dealers connected to the alleged drug trafficking organization and Mr. Blanchard;
- Mr. Blanchard’s apparent possession of dial-a-dope phones on occasion;
- the presence of various dial-a-dope phones at the co-accused’s residential property of 5 Coho Trail;

- attendance by individuals connected with the alleged drug trafficking organization at 5 Coho Trail;
- Mr. Blanchard's WhatsApp communication with an Undercover office regarding the price to purchase high quality cocaine; and
- Significant financial transactions between another subject of the investigation - Sylvio Lin - and Mr. Blanchard. Deposits totalling \$89,000 were made from Mr. Lin's business, Trinita Technology, to Mr. Blanchard in 2018 and 2019.

[15] The grounds to believe Ms. Wright committed offences pursuant to either the *CDSA* or the *Code* are significantly weaker than those in relation to Mr. Blanchard. Neither the confidential informants nor the Crime Stoppers Tipsters name Ms. Wright. There is no police surveillance observing her engaged in short meets consistent with drug trafficking. There is no cell phone tracking data or TDR data linking her to possession of, or communication with, any of the dial-a-dope lines. There are no financial transactions between her and Sylvio Lin. The link between Ms. Wright and the alleged drug trafficking organization appears to be that cars registered under her name are observed, during police surveillance, to be tracking the dial-a-dope line and/or involved in short meets consistent with drug trafficking which, on one occasion, involved an arrest. Ms. Wright is neither the driver nor present in the vehicles on any of these occasions. These observations are made on five occasions between September 2018 and October 2020, most which predate issuance of the warrant by at least a year, if not two.

[16] Before moving on, I pause to note that there are numerous references in the ITO to cell phone numbers labelled as Mr. Blanchard's "old drug phone" and his "new drug phone". While "drug phone" is a defined term in the ITO, no evidence is provided to support or source the identification of these numbers as Mr. Blanchard's drug phones. However, even removing those references from consideration, I am satisfied that the evidence remaining in the ITO is sufficient to provide the issuing judge with reasonable grounds to believe that the *Code* offences had been committed.

[17] The facts arising out of the joint investigation by the RCMP and the CRA are sufficient to establish reasonable grounds for the issuing judge to believe that offences under the *Income Tax Act* were committed. Various production order results and a net worth analysis showed significant unreported income for Mr. Blanchard and Ms. Wright - \$1,276,410 - for the years 2013 to 2018. That, coupled with information showing that Mr. Blanchard and Ms. Wright were spending well above their reported income during the same period – with personal expenditures of \$1,253,516 – provided reasonable grounds to believe there was a secondary source of unreported income. As what can be considered an example of spending well above his reported income, the ITO sets out that Mr. Blanchard purchased 25 vehicles between 2013 and 2018. While the purchase cost of some of the vehicles is listed as "unknown", five vehicles had a purchase price of over \$45,000. Despite having reported no income for 2013 to 2016, 16 vehicles were purchased during that period. Further, the deposits into Mr. Blanchard's multiple bank accounts are noted to be "steady and consistent" and, as such, suggestive of an unreported business income.

[18] As noted above, the threshold for issuance of a judicial authorization is low, requiring only a “credibly based probability”. Neither “proof beyond a reasonable doubt” nor even the establishment of a *prima facie* case is required. Based on the cumulative weight of the information in the ITO, I find that there were reasonable grounds for the issuing judge to believe that the named offences had been committed.

Does the ITO establish reasonable grounds to believe that the things searched for exist and were at the location to be searched?

[19] No. I am prepared to accept, for the sake of this analysis alone, that it was available to the issuing justice to reasonably infer the things sought existed. However, I find that the ITO does not provide an evidentiary foundation sufficient to establish reasonable grounds to believe that the things sought would be found at 5 Coho Trail, or the various places connected to 5 Coho Trail listed in the warrant, at the time the warrant was to be executed.

[20] In my view, as discussed below, the affiant of the ITO failed to state investigative facts that could support reasonable grounds to believe that the things sought will be found at the place to be searched.

Propensity

[21] I am mindful that suspecting someone of drug trafficking does not automatically justify the issuance of a warrant to search their home (*R v Aboukhamis*, 2015 ONSC 2860, at para 38). Even reliable information that an individual is trafficking in drugs is not, without more, sufficient to justify a search of their home (*R. v. Herdsman*, 2012 ONCJ 739, at paras. 69 and 70). While it can be tempting to infer that those who

traffic in drugs keep the trappings of the trade in their homes, the courts have cautioned against relying on stereotypical inference-drawing unsupported by any case-specific evidence in the review of ITOs (*Morelli*, para. 81). Search warrants are "place specific"; it is therefore essential that an ITO supporting an application for a search warrant sets out reasonable grounds to establish that the things sought will be in a specific place.

[22] In this case, although the affiant of the ITO does not expressly incorporate stereotypical generalizations about what drug dealers do, nor expressly invite the inference that drug trafficking paraphernalia would be found in 5 Coho Trail because drug traffickers keep drug trafficking materials in their homes, it appears to be the unstated assumption undergirding the ITO. However, the ITO does not establish either the veracity of the generalization that those suspected of drug trafficking, store drug trafficking materials at their homes, nor that Mr. Blanchard or Ms. Wright are, in fact, the "type" to which the generalization might have applied (*Morelli*, para 71).

Informants

[23] The investigation summarized in the ITO relied on information from four confidential informants, as well as Crime Stoppers Tips. I find it unnecessary to delve into whether the information obtained from these sources was credible, compelling, or corroborated, as none of the informants or tipsters provided any information that drug trafficking occurred at 5 Coho Trail, that the trappings of drug trafficking would be found there, or that the proceeds of crime were stored there.

Surveillance

[24] Extensive surveillance and tracking of Mr. Blanchard and 5 Coho Trail is detailed in the ITO. However, despite that, the ITO contains no observations of Mr. Blanchard attending or leaving 5 Coho Trail that are objectively consistent with having drugs on his person or in his vehicle (*R. v. Ferreira*, 2016 ONSC 2039, paras. 47 and 48). The same can be said for others connected to the “drug group” attending and leaving 5 Coho Trail. In my view, this is not a case where the objective circumstances observed by police supported an inference that things sought would be found in the place searched (*Ferreira*, para. 48; *R. v. Rocha*, 2012 ONCA 707, at para. 26; *R. v. Norley*, 2021 ONSC 6320, at para. 25).

[25] It is worth noting that the observations arising from surveillance of 5 Coho Trail can be contrasted with those made from surveillance of 44 Ketz Road, Mr. Lin’s residence. Surveillance of Mr. Lin’s residence found that there were multiple comings and goings of vehicles and individuals consistent with drug trafficking and that the dial-a-dope phone was present when these observations were made. A purchase of cocaine was made by undercover operators from a vehicle that had attended 44 Ketz Road more than once during the surveillance period. These observations led the affiant to express his belief that 44 Ketz Road was a stash location for the alleged drug group for re-loading product and/or dropping cash at the end of a shift.

CRA Offences

[26] The ITO does not provide an evidentiary basis to support reasonable grounds to believe, or to draw the inference, that Mr. Blanchard and Ms. Wright kept the things

sought in relation to these charges in their dwelling house. Simply put, no factual nexus is made in the ITO between the evidence sought and the applicants' residence.

Does the ITO establish that the things sought will afford evidence of the offences?

[27] Given that I find that the ITO fails to provide reasonable grounds to believe that things searched for will be at the proposed search locations, I need not consider whether the things searched for will afford evidence of the offences.

Conclusion

[28] While I find that the ITO provides reasonable grounds to believe that the offences were committed, it fails to provide sufficient reliable information that the things sought would be found at the locations of the proposed search. Neither the informants nor the tipsters provided information about 5 Coho Trail. The extensive surveillance of Mr. Blanchard and 5 Coho Trail did not provide a basis for reasonable grounds to believe that offence related items would be located there. There is no evidence that Mr. Blanchard or Ms. Wright are the type of offender to keep offence related items in their home. Finally, evidence gleaned through the CRA investigation did not establish a nexus between the items sought and 5 Coho Trail.

[29] The ITO failed to provide sufficient credible and reliable information upon which the issuing justice could have granted the warrant. I find that the warrants were not validly issued and the s. 8 *Charter* rights of Mr. Blanchard and Ms. Wright were breached.

CAIRNS T.C.J.