COURT OF APPEAL OF YUKON

Citation: *R v Blanchard*,
2026 YKCA 12

Date: 20260828
Docket: 25-YU938

Between:

Rex

Appellant

And

Levy Blanchard and Celia Wright

Respondents

Before: The Honourable Justice Griffin
The Honourable Justice Manocchio
The Honourable Justice MacNaughton

On appeal from: An order of the Territorial Court of Yukon, dated July 31, 2025 (*R v Blanchard*, 2025 YKTC 42, Whitehorse Docket 20-00674A).

Counsel for the Appellant:	W. McDiarmid
The Respondents, appearing in person:	L. Blanchard C. Wright
Place and Date of Hearing:	Whitehorse, Yukon June 25, 2026
Place and Date of Judgment:	Whitehorse, Yukon August 28, 2026

Written Reasons by:
The Honourable Justice Griffin

Concurred in by:
The Honourable Justice Manocchio
The Honourable Justice MacNaughton

Summary:

The Crown appeals from the acquittal of the respondents on drug trafficking and weapons charges. The acquittal occurred after evidence obtained from the respondents' residence, on execution of a search warrant, was ruled inadmissible on the basis that the warrant was invalid. The reviewing judge found that there were reasonable grounds to believe that drug trafficking and income tax evasion offences had been committed, but not reasonable grounds to believe that evidence of these offences would be found at the residence.

Held: Appeal allowed, acquittal set aside, and new trial ordered. The reviewing judge did not err in concluding there was no evidence to support a reasonable inference that illicit drugs and related drug equipment and paraphernalia would be found in the residence. However, having reached that conclusion, the reviewing judge made an error of law in stopping her analysis there and overlooking reasonable inferences that could have been drawn by the warrant-issuing judge, that cell phones and financial and banking documents would be found in the residence. The doctrine of severance applies, and the police had authority to search the residence for the latter items.

Reasons for Judgment of the Honourable Justice Griffin:

Overview

[1] This is a Crown appeal alleging a trial judge erred in excluding evidence obtained by police pursuant to search warrants executed on a private residence (the "Residence") and its outbuildings.

[2] The evidence found in the search included cocaine, cash, and firearms. The exclusion of the evidence led to the acquittal of the respondents, Mr. Blanchard and Ms. Wright, on drug and weapons-related offences.

[3] The trial judge excluded the evidence on the basis that the three warrants authorizing the search were invalid on their face, because they did not show reasonable grounds to believe evidence would be found at the Residence. Therefore, the search was unlawful. The basis for the three warrants was a lengthy information to obtain ("ITO") affirmed by Constable Neil Gillis on November 3, 2020.

[4] There was evidence that Mr. Blanchard and Ms. Wright were spouses using the Residence as their home, and they had connections to a dial-a-dope operation.

In addition, there was evidence they were spending money and living a lifestyle suggesting they had income in excess of that reported to the Canada Revenue Agency. A third person lived at the Residence, Mr. Blanchard's brother Patrick Grini, and he was also suspected of being involved in the alleged drug operation.

[5] The key issue on appeal is whether the trial judge erred by failing to consider reasonable inferences that were available to the judge who issued the warrants (the "issuing judge").

Standard for Issuing a Search Warrant

[6] Individuals have privacy interests in their homes that are protected by s 8 of the *Canadian Charter of Rights and Freedoms*, which guarantees their right to be free from unreasonable searches and seizures. The state, including police officers, cannot legally enter someone's private home and search it unless certain legal standards are met justifying the search. These standards balance the interests in law enforcement with an individual's privacy interests.

[7] In numerous decisions the Supreme Court of Canada has set out the basic legal standards governing when somebody has a reasonable expectation of privacy protected by s 8 of the *Charter* and how police may conduct searches and seizures in a lawful way: see for e.g., *Hunter v Southam Inc.*, [1984] 2 SCR 145, 1984 CanLII 33; *R v Edwards*, [1996] 1 SCR 128, 1996 CanLII 255; *R v Morelli*, 2010 SCC 8; and *R v Vu*, 2013 SCC 60. These basic principles apply to searches and seizures involving a residence.

[8] In the circumstances of a case such as this the relevant legal standards require the police to obtain prior judicial authorization to search the residence. This means police ask a judge to issue a search warrant. The police must present evidence under oath in an ITO. That evidence must satisfy the issuing judge that there are reasonable and probable grounds to believe:

a) an offence has been committed; and

b) there is specific evidence of the offence to be found at the place to be searched.

[9] Justice Winteringham succinctly summarized the principles for issuing a search warrant in *R v Guenter*, 2025 BCCA 308 at paras 22-24, based on s 487(1)(b) of the *Criminal Code* and the authorities of *CanadianOxy Chemicals Ltd. v Canada (Attorney General)*, [1999] 1 SCR 743, 1999 CanLII 680; *Hunter*; *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40; *R v Henareh*, 2017 BCCA 7; *R v Sanchez* (1994), 93 CCC (3d) 357, 1994 CanLII 5271 (Ont SC); *Vu*; *R v Reilly*, 2020 BCCA 369; *R v Sadikov*, 2014 ONCA 72; *R v Hafizi*, 2016 ONCA 933; *R v Kalonji*, 2022 ONCA 415; and *R v Okezie*, 2025 ONCA 77. As summarized by Winteringham J.A., the principles that emerge from these authorities are:

a) A justice is permitted to issue a warrant authorizing a peace officer to search a place for a thing and to seize it, where the justice is satisfied there are reasonable grounds to believe the thing is in that place and will afford evidence with respect to the commission of an offence. The evidence includes “all materials which might shed light on the circumstances of an event which appears to constitute an offence”.

b) The “reasonable grounds to believe” standard requires something more than mere suspicion but less than the civil standard of a balance of probabilities. This standard contemplates a practical, non-technical, and common sense evaluation of the probability of the existence of facts and asserted inferences.

c) The issuing justice may draw reasonable inferences from the evidence in the ITO. The ITO need not state the obvious, and the inference need not be the only or most compelling one available. As an example, in a case where there was evidence that the accused likely had a firearm, it was acceptable for a justice to draw an inference, as a matter of common sense, that the accused would likely store the firearm in his home or car.

Standard for Reviewing an Issued Warrant

[10] A person charged with an offence may challenge the evidence obtained from execution of a search warrant as having been unlawfully obtained through breach of their s 8 *Charter* right to be free from unreasonable search and seizure. This may occur when they say there were insufficient grounds for the warrant to be issued. The trial judge hearing the application must review the legality of the warrant (the "reviewing judge") to see if sufficient grounds existed.

[11] The law concerning a challenge to a warrant is well established. Justice Fleming set out these basic principles in *R v Donovan*, 2025 BCCA 30 at paras 82-94.

[12] In summary, a warrant is presumed valid. A party who challenges the legality of a search warrant has the onus of proving on a balance of probabilities that the evidence did not meet the minimum standard of establishing that there were reasonable grounds to believe that the offence has been committed and there was evidence of it to be found at the place to be searched: *Donovan* at paras 81-82. The reasonable grounds standard has been described "as the point at which suspicion gives way to credibly-based probability": *Donovan* at para 87, citing *R v Vu*, 2011 BCCA 536 at para 39, aff'd on this point 2013 SCC 60 at paras 9-15; *Stoughton v Canada (Attorney General)*, 2022 BCCA 212 at paras 28, 30.

[13] *Donovan* explains the basis for a successful facial challenge to a warrant:

> [89] A facial challenge attacks the sufficiency of the ITO based only on the information it contains. The reviewing judge examines the ITO to determine whether the authorizing justice could have issued the warrant: *R. v. Vu*, 2013 SCC 60 at para. 16. <u>In other words, for a facial challenge to succeed, the ITO as written must disclose no basis on which the authorizing judge could have found reasonable grounds to believe that an offence was committed or that evidence of the offence would be found at the place to be searched</u>.
>
> [Emphasis added.]

[14] When reviewing the legality of a warrant, trial judges cannot simply substitute their view of the sufficiency of the evidence in the ITO for the views of the issuing judge. To do so would be in error: *Vu* at para 15; see also *Guenter* at para 25.

[15] Rather, *Vu* explains the proper test on review:

> [16] The question for the reviewing judge is "whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued, not whether in the opinion of the reviewing judge, the application should have been granted at all by the authorizing judge": [citations omitted]. In applying this test, the reviewing judge must take into account that authorizing justices may draw reasonable inferences from the evidence in the ITO; the informant need not underline the obvious: [citations omitted].
>
> [Emphasis added.]

[16] In *Vu* the reviewing judge was found to have erred in her review of an ITO by re-weighing the evidence and substituting her view of its sufficiency. The reviewing judge was critical of the fact that the ITO did not expressly state there were reasonable grounds to believe that documents evidencing ownership or occupation of the subject residence would be found in the residence. She therefore found that the ITO did not support a search warrant for such types of documents.

[17] The Supreme Court of Canada in *Vu* agreed with this Court that the reviewing trial judge had erred. The trial judge failed to consider that the facts set out in the ITO allowed the issuing judge to "reasonably draw the inference" that documents evidencing residence ownership or occupation would be found in the residence. As explained in *Vu*:

> [17] The ITO set out facts sufficient to allow the authorizing justice to reasonably draw the inference that there were reasonable grounds to believe that documents evidencing ownership or occupation would be found in the residence: A.R., vol. II, at p. 112. In particular, the ITO referred to the premises to be searched as a "residence" and as a "two (2) story house" (p. 111). It also indicated that the appellant owned the property and that electricity was being consumed there (pp. 110-11). In my view, it is a reasonable inference that a residence would be the place to look for documents evidencing ownership or occupation. Where else would one expect to find such documents if not in the residence itself? Moreover, I think that the authorizing justice could reasonably infer that a place was being occupied as a residence from the fact that electricity was being consumed at that place and that it had an owner.

[18] Here the reviewing judge succinctly and correctly set out the legal principles governing the issuance of a warrant and its review: *R v Blanchard*, 2025 YKTC 42 at paras 4-7 (the "Ruling").

The Warrants and ITO

[19] The warrants were issued by a judge on November 3, 2020. There were three warrants, supported by Cst. Gillis' sworn ITO, which respectively stated there were reasonable grounds for believing that:

a) Warrant #1:

i) Each of Mr. Blanchard, Ms. Wright, and Mr. Grini had committed the offence of possession for the purpose of trafficking, contrary to s 5(2) of the *Controlled Drugs and Substances Act* [*CDSA*];

ii) The following items would be found in the Residence, outbuildings, and vehicles located on the property, and will afford evidence of the offences:

> 1. Cocaine, Equipment, containers, devices, materials, substances and paraphernalia used to measure, package and transport the substance. This will 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.

b) Warrant #2:

i) Each of Mr. Blanchard and Ms. Wright had committed the offence of possession of proceeds of crime contrary to s 354(1) of the *Criminal Code*;

ii) The following items would be found in the Residence and would provide evidence of the offences:

> 1. Monetary instruments, scoresheets, financial correspondence, financial documents, and business documents.
>
> 2. Computers, tablets, electronic storage devices (portable hard drives, memory sticks) cell phones, and hardware wallets (crypto currency)

c) Warrant #3:

i) Mr. Blanchard had committed the offences of making false statements on income tax returns and tax evasion, contrary to ss 239(1)(a) and (d) of the *Income Tax Act*;

ii) The following items would be found at the Residence and would provide evidence of the offences in relation to Mr. Blanchard:

> i) T1 General Income Tax and Benefit Returns, including financial statements and supporting documents, notices of assessment and reassessment, T1 adjustments, correspondence, memoranda and notes, pertaining to the taxation years from 2013 to 2018;
>
> ii) Banking records held solely or jointly, including bank statements, credit card statements, mortgage statements, negotiated cheques, wire transfer receipts, deposit slips, debit and credit memoranda, cheque stubs, cheque registers, bank and credit union drafts, electronic funds transfer documents, correspondence, wire transfer instructions and memoranda, pertaining to the period from January 1, 2013 to December 31, 2018 inclusive;
>
> iii) Correspondence, documents, memoranda, agreements, contracts, records, credit card vouchers, invoices and receipts pertaining to personal assets, personal liabilities, and personal expenditures for the period from January 1, 2013 to December 31, 2018 inclusive;
>
> iv) Financial records and other documents pertaining to revenue and expenditures, including invoices, receipts, expense vouchers, credit card charge slips and statements of account, loan documents, contracts, agreements, correspondence and memoranda for the period from January 1, 2013 to December 31, 2018 inclusive;
>
> v) Documents containing original handwriting of Levy Blanchard.

iii) The following items would be found in relation to Celia Wright:

> i) T1 General Income Tax and Benefit Returns, including financial statements and supporting documents, notices of assessment and reassessment, T1 adjustments, correspondence, memoranda and notes, pertaining to the taxation years from 2017 to 2018;
>
> ii) Banking records held solely or jointly, including bank statements, credit card statements, mortgage statements,

negotiated cheques, wire transfer receipts, deposit slips, debit and credit memoranda, cheque stubs, cheque registers, bank and credit union drafts, electronic funds transfer documents, correspondence, wire transfer instructions and memoranda, pertaining to the period from January 1, 2017 to December 31, 2018 inclusive;

iii) Correspondence, documents, memoranda, agreements, contracts, records, credit card vouchers, invoices and receipts pertaining to personal assets, personal liabilities and personal expenditures for the period from January 1, 2017 to December 31, 2018 inclusive;

iv) Financial records and other documents pertaining to revenue and expenditures, including invoices, receipts, expense vouchers, credit card charge slips and statements of account, loan documents, contracts, agreements, correspondence and memoranda for the period from January 1, 2017 to December 31, 2018 inclusive;

c) Electronic documents system containing computer programs or other data which may include: storage device(s) or media capable of storing data, peripheral components and devices that may be reasonably necessary for the proper operation of the electronic documents system containing any data pertaining to the items described in paragraphs 1.a)i) to 1.a)iv), and 1.b)i) to 1.b)iv) in digital or electronic format;

d) Documents/records that may be uniquely digital or electronic including but not limited to: e-mail (received or sent or in draft form), records (including deleted/hidden records, and metadata) content of past instant messaging or online chat conversations, internet artifacts or other electronic communication that are stored on or available to an electronic documents system or other digital device or storage media pertaining to the items described in paragraphs 1.a)i) to 1.a)iv), and 1.b)i) to 1.b)iv);

e) Data stored on any network, including the internet, and available to the electronic document system(s) that pertains to the items described in paragraphs i.a)i) to 1.a)iv), and 1.b)i) to 1.b)iv);

f) Data relating to:

i) Ownership, possession, access, use, or control of the electronic documents system and/or its data; and

ii) The configuration of the electronic documents systems and programs; and

g) Items required to access, make intelligible, reproduce, transfer, communicate or receive items described in paragraphs 1.c) to 1.f), including:

i) Electronic documents system and computer components including hardware, equipment, peripheral components and devices;

> ii) Computer programs including operating systems and software;
>
> iii) Documentation and data, including manuals, operating instructions, licensing and operating data, encryption keys, whether preserved, stored or retained on any type of support, intelligible or not, inscribed by a person or an electronic documents system;
>
> iv) Documentation containing computer access information such as user identification and passwords, which may include but is not limited to, memos, sticky notes, address books, notepads and written memory aids; and
>
> v) Power adapters, chargers, cables, manuals, connectors and any other device or software designated to facilitate the functioning of an electronic documents system including subscriber identity modules (SIM cards) and other flash memory devices capable of storing documentation or data that may provide an indication of ownership, use, control, access and configuration of items described in paragraphs 1.g)i) and 1.g)ii).

Reviewing Judge's Decision

[20] The reviewing judge accepted there was evidence in the ITO establishing reasonable grounds to believe the stated offences had been committed: Ruling at para 13.

[21] For the drug trafficking offences, the reviewing judge considered the extensive evidence from confidential informants, Crime Stoppers tips, and surveillance identifying Mr. Blanchard as a person who runs a "dial-a-dope" operation in Whitehorse, and connecting both Mr. Blanchard and to a lesser extent, Ms. Wright, to the drug trafficking organization: Ruling at paras 14-15. It is important to note that the investigation had been conducted over more than two years.

[22] The reviewing judge also found the ITO established reasonable grounds to believe that the *Income Tax Act* offences were committed. In this regard, the reviewing judge held:

> [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.

[23] Despite agreeing that the issuing judge had reasonable grounds to believe the offences had been committed, the reviewing judge found the ITO did not establish reasonable grounds to believe that evidence of those offences would be found at Mr. Blanchard and Ms. Wright's Residence. She found that the ITO did not make out a "factual nexus" between the evidence sought and Mr. Blanchard and Ms. Wright's Residence: Ruling at para 26.

[24] The reviewing judge gave examples of what was lacking in the evidence. As one example, "none of the informants or tipsters" provided any information that drug trafficking occurred at the Residence: Ruling at para 23.

[25] As another example, surveillance of the Residence did not show Mr. Blanchard attending or leaving the Residence in a way that was consistent with drug trafficking, unlike another property under surveillance, on Ketza Road: Ruling at paras 24-25. The observations at Ketza Road were consistent with Cst. Gillis' belief it was a stash location for the alleged drug group, for re-loading product or dropping off cash. At Ketza Road, there were multiple comings and goings of vehicles and individuals consistent with drug trafficking, and when a dial-a-dope phone was present. Further, an undercover operator purchased cocaine from a vehicle that attended the Ketza Road property more than once during the surveillance period.

[26] Ultimately, the judge found the warrants were not validly issued, and the search violated the respondents' privacy rights protected by s 8 of the *Charter*.

[27] The respondents then brought an application under s 24(2) of the *Charter* to exclude the evidence from the search obtained in violation of their s 8 rights. The reviewing judge granted the application: *R v Blanchard*, 2025 YKTC 52. No appeal is brought from that ruling.

[28] With the evidence excluded, the respondents were acquitted.

<u>Issue on Appeal</u>

[29] The Crown may only appeal from an acquittal based on an error of law: s 676(1)(a), *Criminal Code*. For the Crown to obtain a new trial based on an error of law, it must show the error of law "might reasonably be thought, in the concrete reality of the case at hand, to have had a material bearing on the acquittal": *R v Graveline*, 2006 SCC 16 at para 14. This burden is a heavy one, as acquittals are not to be overturned lightly: *R v Hodgson*, 2024 SCC 25 at para 36.

[30] The Crown submits that the reviewing judge committed a similar error to that in *Vu*: she substituted her view of the evidence in the ITO for that of the issuing judge. Further, the reviewing judge did not consider whether reasonable inferences were available from the information in the ITO that could satisfy the issuing judge the necessary standard was met.

[31] The error the Crown alleges, if established, would amount to an error of law. This Court is therefore concerned with the correctness of the reviewing judge's decision: *Guenter* at paras 30-32.

[32] The respondents submit that the reviewing judge made no errors, and there was no evidentiary basis for the search warrants.

<u>Analysis</u>

[33] The length and form of the ITO made the reviewing judge's task difficult. Cst. Gillis' affidavit is 158 pages long and hard to follow. Further, at times Cst. Gillis makes broad conclusory statements as to his "beliefs" about the alleged drug operation, without tying those beliefs to specific pieces of evidence. This requires a

reviewing court to comb the lengthy affidavit to consider whether there is evidence that might support the belief as reasonable. Some of the pieces of evidence he refers to, such as a person's visit to the Residence while in possession of a dial-a-dope phone, is extremely dated, for example, occurring more than two years before. However, the form and organization of the affidavit was in part also a product of the length of the investigation and the multiple pieces of surveillance and informant evidence.

[34] As found by the reviewing judge, there was sufficient evidence in the ITO to support reasonable grounds to believe that the offences had been committed.

[35] In considering whether there was sufficient evidence to support reasonable grounds to believe that evidence of the offences would be found at the Residence, the reviewing judge contrasted the surveillance, informant, and tipster evidence concerning a residence on Ketza Road, with the lack of similar evidence regarding the Residence. The Crown is critical of this comparison and submits just because there was more evidence regarding one address does not mean that reasonable inferences could not be drawn regarding evidence at the Residence.

[36] I do not find any reason to be critical of the reviewing judge's reference to the evidence regarding Ketza Road.

[37] The reviewing judge understood the police were alleging, based on surveillance, informant, tipster, and other evidence, that persons working in the subject dial-a-dope operation, were using the Ketza Road residence for reloading drugs, cash drop off, and shift changes. I agree with the reviewing judge that the distinct contrast in observed activity at Ketza Road versus at the Residence made it unreasonable to draw the inference, in the absence of supporting evidence, that the same activity was occurring at the Residence.

[38] I understand and agree with the reviewing judge's concern that there was a lack of surveillance, informant, or tipster evidence to support a reasonable inference that the supplying, buying, and selling of drugs was occurring at or from the

Residence itself, in contrast to evidence of such activities at Ketza Road. I therefore would agree with the reviewing judge's analysis to this extent: the evidence did not support a reasonable inference that cocaine and related equipment and paraphernalia would be found at the Residence. There was no reasonable inference that rose above mere suspicion. For example, one could not infer as a matter of common sense that just because there was extensive evidence that the respondents were involved in a drug trafficking operation, that specific evidence of drug trafficking would be found in the Residence. Someone who engages in drug trafficking may well separate the more dangerous aspects of the illicit trade from their residence.

[39] However, in my respectful view, the reviewing judge mistakenly ended her analysis there. She overlooked the fact the warrants also authorized the search for cell phones, cash, and various financial records that could provide evidence of the alleged offences.

[40] In my view, the Crown's position on appeal regarding the judge overlooking reasonable inferences has merit for two reasons.

[41] First, the findings in the reviewing judge's reasons at para 14 support reasonable inferences regarding cell phone evidence to be found at the Residence, as follows:

> 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;
- <u>undercover RCMP purchases of drugs from dial-a-dope phones connected with the alleged drug trafficking organization</u>;
- detention/arrests of both buyers and street dealers connected to the alleged drug trafficking organization and Mr. Blanchard;
- <u>Mr. Blanchard's apparent possession of dial-a-dope phones on occasion</u>;
- <u>the presence of various dial-a-dope phones at the co-accused's residential property of 5 Coho Trail</u>;
- attendance by individuals connected with the alleged drug trafficking organization at 5 Coho Trail;
- Mr. Blanchard's WhatsApp communication with an Undercover office[r] 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, Triniti Technology, to Mr. Blanchard in 2018 and 2019.

[Emphasis added.]

[42] The ITO referred to undercover and surveillance evidence of a cell phone being tracked to the Residence, in September and October 2020, close in time to the same cell phone being used in dial-a-dope transactions. For example, seven hours after the cell phone was tracked to the Residence (and later tracked elsewhere) undercover officers purchased cocaine on delivery after calling the number, in the early hours of November 1, 2020.

[43] In my view, the relationship between Mr. Blanchard and Ms. Wright, the extent of their longstanding links to the drug operation, including their ownership of multiple vehicles used in the operation, and the fact that a short time before the issuance of the warrants two dial-a-dope phones were tracked to the Residence, one of which was used less than seven hours later in an undercover drug purchase transaction, could permit the issuing judge to draw a reasonable inference that at a minimum, a search of the Residence would locate cell phones connected to the drug

trafficking offences, as set out in Warrant #1. The reviewing judge overlooked this reasonable inference.

[44] Second, where two people are a domestic couple living in their home, which is the case with Mr. Blanchard and Ms. Wright, and there is evidence they have been operating a cash-based business for a considerable time period (allegedly an illicit drug trafficking business), and there is evidence they have been living beyond their reported income, it is an objectively reasonable inference that they would keep at least some of their financial records and cash at their home. The judge overlooked these reasonable inferences and that they support the various items sought and described as cash, financial records, including score sheets and electronic records, and the like, in Warrant #1, Warrant #2, and Warrant #3.

[45] I would conclude that all of the warrants were valid except for part of Warrant #1 relating to the search for cocaine and related equipment and paraphernalia (that is, the first two sentences of Warrant #1). This means the part of Warrant #1 related to cellular phones, cash, documents and records is valid as are Warrant #2 and Warrant #3.

[46] If this Court rules that part but not all of a warrant is valid, the Crown seeks to rely on the doctrine of severability as set out in *R v Whitaker*, 2008 BCCA 174 at paras 46-47. *Donovan* explains the doctrine this way:

> [145] The doctrine of severability provides that even if the reviewing court finds the grounds in the ITO are not capable of satisfying the issuing justice that certain items would be located in the place to be searched, it does not follow that the warrant is invalid with respect to the authorized seizure of other items: *Whitaker,* at para. 47; *R. v. James*, 2018 BCSC 405 at paras. 40, 60. Where the invalid part of the warrant is clearly severable from "the good", the warrant remains valid insofar as the ITO supports its issuance regarding the other items. This is plainly the case here.

[47] Justice Riley (as he then was) explained severability in the above-cited case of *James*:

> [40] ... [T]he justice of the peace issued a warrant to search Mr. James' car for a number of specific items believed to be evidence of the offences under investigation. ...[E]ven if I were to conclude that the grounds were not

> capable of satisfying the issuing justice that certain specific items would be located in the car, there are instances where the remedy for such a deficiency in the grounds would be simply to delete or sever those particular items from the things to be searched for. In such circumstances, the warrant might still be valid, insofar as it authorized a search of Mr. James' car for other items in respect of which the court concludes that there was a continuing basis on which the justice of the peace could have issued a warrant. This approach is sometimes referred to as the doctrine of severability discussed in *R. v. Whitaker* at para. 47.

[48] In my view, in this case, "the good" is clearly severable from "the bad" and the purported authorization for the search and seizure of cocaine and related equipment and paraphernalia is not "so interwoven" with the other items listed that they cannot be separated: *R v Johnson & Franklin Wholesale Distributors Ltd.* (1971), 3 CCC (2d) 484 at 489-490, 1971 CanLII 1177 (BC CA), leave to appeal ref'd, [1971] SCR ix; *Grabowski v The Queen*, [1985] 2 SCR 434 at 453, 1985 CanLII 13.

[49] Here, applying the doctrine of severability, the warrants authorizing the search of the Residence were valid except for the references to cocaine and related equipment and paraphernalia. The police were authorized to search the Residence for and to seize the other items, that is, the described cell phones, financial and banking records and electronic documents.

[50] It remains to be seen whether the seizure of the items not specifically authorized by the warrant, such as the cocaine and firearms, is justified in some other way. There are a number of exceptions to the rule against a warrantless seizure that could have arisen during the lawful search for the other items. Because the reviewing judge ruled the entire search unlawful, it is unknown whether any such exceptions apply and justified the police seizure. These arguments would have to be first advanced and determined in the trial court.

[51] However, to the extent the warrants were valid, there was no breach of the respondents' s 8 *Charter* rights, and evidence should not have been excluded on that ground. Here, the reviewing judge's legal error clearly had a material bearing on the acquittal: *Graveline* at para 14.

[52] I would therefore set aside the reviewing judge's ruling that the warrants were not validly issued, set aside the acquittal, and order a new trial.

"The Honourable Justice Griffin"

I AGREE:

"The Honourable Justice Manocchio"

I AGREE:

"The Honourable Justice MacNaughton"