Date: 20250626
Docket: CR 23-04-01358
(The Pas Centre)
Indexed as: R. v. Campbell
Cited as: 2025 MBKB 88

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,	)	Michael G. Himmelman
	)	Eric S.J. Shinnie
- and -	)	for the Crown
	)	
KEITH CAMPBELL,	)	Zachary B. Kinahan
	)	Ashley S. Anderson
accused.	)	for the accused
	)	
	)	Judgment Delivered:
	)	June 26, 2025

Publication Restriction Notice: *No information regarding any portion of this voir dire shall be published in any document or broadcast or transmitted in any way before judgment is given in this case.* ***This publication ban expired on February 11, 2026.***

RULING ON *VOIR DIRE*

GRAMMOND J.

INTRODUCTION

[1] The accused is charged with two counts of second degree murder relating to the shooting deaths of two individuals in The Pas, Manitoba, on January 15, 2023 (the "Shootings"). He has brought an application under s. 24(2) of the ***Canadian Charter of Rights and Freedoms*** to exclude evidence obtained from a cellular phone that police seized after his arrest on February 1, 2023 (the "Phone"). Police obtained a

warrant to search the Phone on March 10, 2023 (the "Warrant"), and the Crown seeks to rely upon electronic messages retrieved from the Phone at the trial of this matter.

[2] On April 8, 2025, I issued written reasons for decision[1] (the "Decision") relative to four preliminary issues raised by the accused relative to the seizure of the Phone. One of those issues was the accused's request for leave to cross-examine a police officer (the "Affiant") who affirmed an Information to Obtain (the "ITO") in support of the Warrant. The cross-examination of the Affiant took place on April 7, 2025.

[3] On April 22, 2025, I heard submissions with respect to the validity of the Warrant, and the admissibility of evidence found on the Phone pursuant to s. 24(2) of the ***Charter***. These reasons relate to my findings on those issues.

CONTENT OF THE ITO AND VALIDITY OF THE WARRANT

[4] The Crown conceded that the Warrant was facially invalid, because it did not include an expiry date for execution, and was not executed for several weeks after issuance, such that the search of the Phone was a warrantless search that breached the accused's s. 8 ***Charter*** rights.

[5] The accused also submitted that the Warrant was facially invalid, because there were no reasonable grounds upon which to search the Phone. In addition, the accused advanced a sub-facial challenge of the Warrant on the basis that the ITO contained both errors and irrelevant information, and the Affiant failed to make full, fair, and frank disclosure to the authorizing justice.

[1] ***R. v. Campbell***, 2025 MBKB 49.

The Law

[6] The ***Criminal Code***, R.S.C., 1985, c. C-46 (the "***Code***"), provides that a warrant may be issued where there are reasonable grounds to believe that there is in a place anything that will afford evidence with respect to the commission of an offence.

[7] As stated in ***R. v. Campbell***, 2011 SCC 32:

> [14] … In order to comply with s. 8 of the *Charter*, prior to conducting a search the police must provide "reasonable and probable grounds, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of the search" (*Hunter v. Southam Inc.,* 1984 CanLII 33 (SCC), [1984] 2 S.C.R. 145, at p. 168). …

[8] In this case, the accused conceded that there were reasonable grounds to believe that an offence had been committed, and as such the only issue before me is whether there were reasonable and probable grounds to believe that there was evidence of the Shootings to be found on the Phone.

[9] In conducting this review, which is known commonly as a ***Garofoli*** [2] review, it is important to note certain well-established legal principles, as stated in ***Campbell***, at paragraph 14, and echoed in many subsequent cases[3]:

a) a ***Garofoli*** review is deferential by nature;

b) a search warrant and the underlying sworn information are presumed to be valid;

c) the accused bears the burden of demonstrating, on a balance of probabilities, that the ITO is insufficient to establish reasonable grounds;

---

[2] ***R. v. Garofoli***, [1990] 2 SCR 1421

[3] These cases include ***Hunter et al. v. Southam Inc.***, [1984] 2 S.C.R. 145, ***R. v. Collins***, [1987] 1 S.C.R. 265, ***R. v. Araujo***, 2000 SCC 65, ***R. v. Morelli***, 2010 SCC 8, ***R. v. Jacob (J.A.)***, 2013 MBCA 29, and ***R v Desilva***, 2025 MBCA 30.

d) the standard of proof for reasonable grounds is not a high or overly onerous standard. It is the point where credibly-based probability replaces suspicion;

e) the question for a reviewing court is not whether it would have issued the warrant, but whether there was sufficient credible and reliable evidence to permit the issuing justice to have done so; and

f) in conducting this analysis, the reviewing court must exclude erroneous information from the ITO, and may have reference to material properly received as "amplification" evidence.

[10] In ***R. v. Pilbeam***, 2018 MBCA 128, the court stated:

> [7] Warrant review "involves a contextual analysis, not a piecemeal approach to individual items of evidence shorn of their context" (*R v Beauchamp*, 2015 ONCA 260 at para 85). Like a painting or photograph, an ITO's meaning can only be properly understood if it is considered as a whole. Reviewing judges should be skeptical of attempts to deconstruct an ITO by looking at its aspects in isolation. Such an approach is an error in principle. Rather, the reviewing judge is to assess the facts and the reasonable inferences available by taking a "practical, non-technical, and common-sense" assessment of the totality of the circumstances (*R v Whitaker*, 2008 BCCA 174 at para 42, leave to appeal to SCC refused, 32657 (30 October 2008); see also *R v Evans (ED)*, 2014 MBCA 44 at para 10).

[11] In addition, as referenced above, the law is clear that when reviewing the validity of a warrant, the court must disregard any allegations that are found to be false, and must consider any facts omitted by the affiant (***Araujo***, at paragraph 57). Put another way, as stated in ***Morelli***:

> [41] The reviewing court does not undertake its review solely on the basis of the ITO as it was presented to the justice of the peace. Rather, "the reviewing court must exclude erroneous information" included in the original ITO (*Araujo*, at para. 58). Furthermore, the reviewing court may have reference to "amplification" evidence — that is, additional evidence presented at the *voir dire* to correct minor errors in the ITO — so long as this additional evidence

> corrects good faith errors of the police in preparing the ITO, rather than deliberate attempts to mislead the authorizing justice.

[12] I am also mindful of the comments of the court in ***R. v. Nguyen***, 2011 ONCA 465, that:

> [57] … the central consideration on the review of a search warrant is whether on the record as it existed before the issuing justice and as amplified at the hearing, with any offending portions of the ITO excised, there remains a sufficient basis upon which the warrant *could be* issued. Police conduct is clearly relevant to that consideration. However, the review is not an exercise in examining the conduct of the police with a fine-toothed comb, fastening on their minor errors or acts or omissions, and embellishing those flaws to the point where it is the police conduct that is on trial rather than the sufficiency of the evidence in support of the application. This is particularly so where, as here, the trial judge has specifically found that the applicant did not intend to mislead the issuing justice.
>
> [58] There may have been some flaws in the ITO presented by D.C. Mason in support of the application – the confusing reference to both 304 and 302 Sheppard Ave. in the paragraph cited above, for example. Few applications are perfect. The flaws did not go to the heart of the application ...

[13] Similarly, in ***R. v. Green***, 2015 ONCA 579, the court stated:

> [18] … the ITO must be read as a whole in a common sense manner and having regard to its author. Police officers are not wordsmiths and the ITO is not to be parsed as though produced by a meticulous solicitor: see e.g. *R. v. Chan*, 1998 CanLII 5765 (ON CA), [1998] O.J. No. 4536 (C.A.), at para. 4. No doubt, this ITO, like most, could have been more felicitously drawn and organized. Those failings do not, however, mean that the ITO as redacted did not provide sufficient grounds for the issuance of the warrant. …

[14] In ***R v Beckles***, 2022 ABQB 39, the court stated that:

> [86]
>
> …
>
> - Erroneous information that could have been appropriate for inclusion in the ITO if presented accurately will sometimes be corrected by amplification so that it can be considered during the sufficiency review. Amplification entails adding information that should have been disclosed to give a more accurate picture or to replace inaccurate information with accurate information. When material information that would have hindered a finding of reasonable and probable grounds has been omitted, the ITO must be amplified to include it.

> However, amplification relating to information that could advance the warrant is permissible only if the error is (1) minor, technical error; and (2) made in good faith (para 59); (emphasis omitted)
>
> - Where the erroneous information cannot be corrected because the error is not a "minor, technical" one, it must be excised in its entirety. This is because uncorrected, erroneous information simply cannot be permitted to remain in the ITO, thereby providing an inaccurate boost to the case for reasonable and probable grounds. The same is true if the officer has not acted in good faith, in such circumstances amplification is not available and the misleading information may not remain (paras 63-64); …
>
> …

[15] To summarize, in ***Desilva***, the court stated that "[t]here is not only one right answer as to whether there are reasonable grounds for the issuance of a search warrant", and the question "is whether the authorizing justice *could* have found there to be reasonable grounds".

The ITO

[16] The ITO reflected that a group of four young males was captured on video surveillance walking around The Pas in the area of the Shootings, and that the accused was one of the young males. The Affiant articulated a series of grounds for this belief in the ITO, including references to various witness statements given to police.

[17] In support of his request that the Warrant be declared invalid, the accused pointed to specific content in the ITO, summarized into two main categories as follows:

a) errors and omissions in the Affiant's recounting of what three witnesses told police in their respective witness statements; and

b) references to another shooting incident (the "Other Shooting") that occurred in The Pas on the same morning as the Shootings.

Errors and omissions relative to three witness statements

[18] It is clear that the ITO contained errors when compared with the contents of the statements given by three witnesses. More specifically, the ITO reflected that:

a) a witness encountered a group of aggressive individuals on the morning of the Shootings, when the witness actually stated that only one individual in the group was acting in an aggressive manner (at paragraphs 13(a) and 55);

b) a witness heard "tapping" sounds at a particular time, when the witness in fact advised police that she did not know at what time she heard the tapping sounds (at paragraph 14(f)); and

c) a witness identified the accused as being present at the New Avenue Hotel in The Pas (the "Hotel"), which was inaccurate because the witness did not name the accused personally (at paragraph 20(d)).

[19] The Crown suggested that the following excerpts be excised from the ITO:

a) in paragraph 13(a), the statement that the witness "came across" a group of males in the back alley;

b) in paragraph 14(f), the statement that the witness heard "a tapping sound" at around 12:00 to 12:30 a.m.;

c) in paragraph 20(d), the sentence that reads, "He identified another male as Keith Campbell"; and

d) the whole of paragraph 55.

[20] The accused argued that the whole of each of these paragraphs of the ITO should be excised, together with paragraphs 20(b) and 20(c), and that the court should amplify the record as referenced below.

[21] I will comment upon each of these aspects of the ITO in turn.

Paragraphs 13(a) and 55

[22] The ITO reflected (in the second sentence of paragraph 55) that a witness encountered a group of aggressive individuals in a back alley on the morning of the Shootings, when the witness actually stated that only one individual in the group was acting in an aggressive manner. In addition, as the accused submitted, the ITO included no reference to the witness's statement to police that the other individuals in the group attempted to dissuade the aggressive male's behaviour.

[23] The accused argued, therefore, that the Affiant drafted this aspect of the ITO in a manner that was slanted against him, and that when reviewing the validity of the Warrant, the court should consider as amplification evidence the witness's statement that some of the males attempted to dissuade the behaviour of the aggressive male.

[24] On cross-examination, the Affiant testified that the ITO was drafted in this manner because he thought it was important to convey to the issuing justice that the group of individuals, whom he believed were involved in the Shootings, was together in the back alley, close to the scene of the Shootings, and that one of the individuals said he had a gun. The Affiant did not appreciate, however, the relevance of the detail that only one of the males was acting aggressively, and that the others attempted to dissuade him. The Affiant acknowledged that he was required to include information in

the ITO regardless of whether it supported the police theory, and that he could see now that the ITO is deficient in this regard. He also testified that he was not attempting to mislead the issuing justice by preparing the ITO in this manner.

[25] I agree with the accused that the ITO reflects both an error and an omission on this point. First, the ITO should not have reflected that the whole group of males was acting aggressively, and second, it should have reflected that some of the males attempted to dissuade the behaviour of the aggressive male. In other words, the ITO should have conveyed the details of the witness's statement more accurately, particularly because doing so would have hindered a finding of reasonable and probable grounds.

[26] As such, the ITO must be excised and amplified on this point. More specifically, the second and third sentences of paragraph 55 of the ITO will be excised, and when I consider the validity of the Warrant, I will do so with regard to the statement that the other males attempted to dissuade the aggressive male's behaviour.

[27] Having said that, I will not excise, as the Crown requested, the phrase "came across" in paragraph 13(a) of the ITO, because in my view doing so would not cure an error. In other words, the words used to describe how the witness came into contact with the group of males is not material to the validity of the Warrant, and if it is material, the phrase "came across" is, in my view, benign.

Paragraph 14(f)

[28] The first sentence of paragraph 14(f) of the ITO reflected that: "Around 12:00 to 12:30 a.m., Randi heard a tapping sound and Jordan [one of the victims] was

moaning". This statement was inaccurate because the witness actually advised police that she did not know at what time she heard the tapping sounds.

[29] On cross-examination, the Affiant testified that the ITO was drafted in this manner because he relied upon a written synopsis of the witness's evidence prepared by another officer, which he now knows was inaccurate on its face. In other words, although the Affiant did not make this error himself, he did not discover it by doing any due diligence prior to filing the ITO.

[30] On that basis, I will redact the phrase "a tapping sound and", such that the sentence will read: "Around 12:00 to 12:30 a.m., Randi heard Jordan was moaning". For the same reasons, and although it was not suggested by counsel, I will also redact from the second sentence of paragraph 56 of the ITO the phrase "tapping [gun shots] and", such that it will read "He then went outside, and at approximately 12:30 a.m., Randi said that she heard Jordan moaning".

[31] When I consider the validity of the Warrant, I will do so with regard to these excisions, and the amplification derived from the witness's statements, which reflect that she does not know at what time she heard the tapping sounds. That evidence would have conveyed a more accurate picture of the witness's statements, and could have hindered a finding of reasonable and probable grounds, because it is relevant to the timeline upon which the Shootings unfolded.

Paragraphs 20(b), 20(c), and 20(d)

[32] Paragraph 20(b) of the ITO reflected that the owner of the Hotel bar "was asked if he knew anyone from the group of four males seen on the video surveillance from his

bar. He said they were all Campbells from Moose Lake". I will not excise this paragraph as requested by the accused, because in my view its contents are accurate when compared with the witness's statement.

[33] Paragraph 20(c) of the ITO reflected that the same witness "said he knew the male in the red coat to be Charged 1." I will not excise this paragraph because its contents do not pertain directly to the accused.

[34] Paragraph 20(d) of the ITO reflected that "He identified another male as Keith Campbell. In the video surveillance, this male had his jacket open in the bar and was wearing a maroon hoodie with a white crest on the front of it, under his jacket." The first sentence of this paragraph was inaccurate, because the witness did not name the accused personally in his witness statements.

[35] On cross-examination, the Affiant testified that this error arose because he was advised by another officer that the witness had identified the accused by first and last name. It is unclear whether the error arose because the other officer gave the Affiant misinformation, or whether the Affiant misunderstood what the other officer said. Apparently, neither officer made notes of the substance of their conversation.

[36] On that basis, I will redact the first sentence of paragraph 20(d) from the ITO, and when I consider the validity of the Warrant, I will do so with regard to that excision.

[37] Given this redaction, the second sentence of paragraph 20(d) requires clarification in terms of the use of the phrase "this male", which, as drafted, referred to the accused. I will consider as an amplification, therefore, the second (now first)

sentence of paragraph 20(d) to read as follows: "In the video surveillance, another male had his jacket open in the bar and was wearing a maroon hoodie with a white crest on the front of it, under his jacket".

The Other Shooting

[38] The accused argued that all references to the Other Shooting should be redacted from the ITO, because they relate to nothing more than a theory that the two shootings were related, based upon limited evidence. More specifically, there was no evidence to suggest that the accused was involved in the Other Shooting, and as such the references thereto are highly prejudicial. The accused asked, therefore, that all references to the Other Shooting be redacted from the ITO, including:

a) paragraphs 8, 9, 10, 12(a), 15(a), and 55;

b) the "end note" to paragraph 15; and

c) the following phrases:

(1) from paragraph 15: "in the multiple shooting files under investigation"; and

(2) from paragraph 18: "and related shootings".

[39] Although the Crown agreed that the whole of paragraph 55 should be redacted, it argued that the other references to the Other Shooting should remain in the ITO, because police had grounds to believe that the two incidents were related based upon the following factors:

a) both incidents appeared to involve males dressed in black and carrying a long gun;

b) multiple shots were fired at each scene;

c) multiple .22 calibre bullet casings were recovered from each scene;

d) a group of males that police believed to include the accused, one of whom was carrying a long gun, was seen to enter the same residence; and

e) the Shootings and the Other Shooting occurred on the same morning, and The Pas is typically not a violent community in which police might expect two unrelated shootings to occur close in time.

[40] On cross-examination, the Affiant acknowledged that he tried to draw a connection between the two shootings in the ITO, because the investigative theory of police was that these events were connected. This theory was based upon the fact that The Pas is not that violent of a community, and that the same calibre of firearm was used in both incidents. He acknowledged, however, that there was no confirmed connection between the events at the time, and that there was no information specifically tying the accused to the Other Shooting. Having said that, he testified that at the material time he believed that it was prudent to consider whether the two events were linked, and he continues to hold that belief.

[41] The accused noted the Affiant's testimony that he reviewed the necessary information on or about January 20, 2023, and that he did not refer back to that material when he prepared the ITO in March 2023. In other words, he did not obtain an update regarding whether police continued to believe that the Shootings and the Other Shooting were related, and as such he did not act with diligence. The accused

contended that the Affiant should have either re-reviewed the investigative materials himself, or verified with other officers that police maintained the theory.

[42] In paragraph 84 of the Decision, I expressed concern about the first sentence of paragraph 55 of the ITO, and in particular the statement that the four males were seen running from the scene of the Other Shooting. That statement was made in error, and must be excised from the ITO as proposed.

[43] As I stated in the Decision, police ultimately determined that the Other Shooting was unrelated to the Shootings, but it is unclear from the evidence on the *voir dire* when that determination was made relative to the date on which the ITO was sworn. In my view, given the apparent similarities between the two incidents set out at paragraph 39 above, it was both logical and necessary for police to consider whether the shootings were related. In the absence of evidence that police determined the Other Shooting to be unrelated to the Shootings on or before March 10, 2023, when the ITO was affirmed, I am not prepared to excise all references to it from the ITO.

[44] In my view, the balance of the references to the Other Shooting in the ITO were relevant at the material time and were presented fairly, including in particular the end note to paragraph 15 which read: "Forensic testing of the shell casings is pending. At this time there is no evidence linking the shell casings from each scene to each other."

Position of the parties

Defence

[45] The accused argued that the ITO contained so many errors that the "surgical attention" required to rehabilitate it is beyond what is appropriate. In other words, the

identified errors and omissions call into question the validity of the whole of the document, such that confidence in its contents is lost.

[46] The accused also submitted that the ITO did not reflect full, fair, and frank disclosure to the authorizing justice, such that the Affiant failed in his duty and the Warrant should be deemed to be invalid. More specifically, and as referenced above, the ITO was written with a slant against the accused. The accused contended that although the Affiant had some discretion to decide what information should be included in the ITO, the contents should have been balanced with both helpful and harmful content.

[47] The accused also argued that there were no reasonable grounds to justify the Warrant, because there was no evidence that the Phone, or any phones, were involved in the Shootings. In other words, there were no reasonable grounds upon which to conclude that evidence of the Shootings would be found on the Phone, such that the ITO did not establish any nexus between the Shootings and the Phone. It reflects little evidence that the accused was involved in the Shootings, and none that the Phone was involved.

[48] The accused did not argue that the Affiant acted with a nefarious purpose when he prepared the ITO, that he misled the issuing justice purposely, or that he was untruthful in the ITO. The accused argued, however, that the Affiant should have been much more cautious when preparing the ITO, and that he might have acted recklessly or carelessly in doing so. More specifically, he may have developed "tunnel vision" relative to the theory of the police investigation, such that he failed to meet the requisite standard. In the result, the contents of the ITO were not reliable, which the

Crown acknowledged by requesting multiple excisions. The accused argued that regardless of the underlying reasons or causes of the problems with the ITO, when considered in its entirety, the required standard has not been met, and the Warrant should be set aside.

Crown

[49] The Crown argued that there was no effort to manipulate the contents of the ITO in favour of issuing the Warrant. The Affiant made honest errors that he acknowledged on cross-examination, which can be addressed appropriately through excision.

[50] The Crown argued that even after excisions to the ITO, the issuing justice would have been satisfied that the Warrant should have issued for the Phone, because there was reliable evidence that might reasonably be believed, upon which to base the Warrant. In other words, the accused has not established that, on a balance of probabilities, the ITO was insufficient to establish that evidence would not be found on the Phone.

[51] The Crown noted that in law, phones can contain significant evidence of offences and, as the ITO reflected, gathering evidence from the Phone would assist the investigation, because multiple individuals were involved in the Shootings and there could have been conversations among them on the Phone.

Analysis

[52] I am mindful of the fact that the Warrant is presumed to be valid, and that the question before me is whether there is any basis upon which the authorizing justice could have been satisfied that the relevant statutory preconditions existed, on the basis

of the redacted and amplified record. The applicable test is not whether I would have issued the Warrant.

[53] I must consider whether the totality of the circumstances set out in the ITO disclose reasonable grounds upon which to believe that evidence of the Shootings would be found on the Phone. I note also, as referenced above, that the standard to establish reasonable grounds is not a high or overly onerous standard. Rather, the law is clear that the standard is met at the point where credibly-based probability replaces suspicion.

[54] Further, the record underlying a warrant is not required to be perfect, and the ITO in this case was certainly imperfect. Having said that, I must consider whether the flaws in the ITO go to the heart of the application for the Warrant, meaning whether the flaws undercut the probability that evidence would be found on the Phone, or challenge the reliability and/or credibility of the information in the ITO.

[55] I agree with the accused that the errors in the ITO were not clerical in nature. With respect to the errors and omissions in paragraphs 13(a) and the second sentence of paragraph 55, regarding the encounter between a witness and a group of males, I agree that the Affiant slanted the content of the ITO in a manner that did not favour the accused. Having said that, I accept the Affiant's evidence that he had no intention to mislead the issuing justice. Rather, in my view, the Affiant did not think through the presentation of the evidence on this point, and the light in which the accused would be portrayed as a result. Moreover, I note that the encounter between the group of males and the witness did not relate directly to the Shootings. It was an ancillary event, such that the particulars of that encounter, including what each individual said or did at the

material time, may have little impact upon the ultimate merits of the case. As such, in my view, that flaw did not go to the heart of the ITO.

[56] With respect to the errors in paragraphs 14(f) and 20(d), I accept that the Affiant was entitled to rely upon the summaries of witness statements provided to him by other officers, either orally or in writing. The law is clear that an affiant can synthesize investigative material to draft an ITO concisely[4], and that they need not conduct their own investigation if there is no indication that they are being misled by other officers[5]. Although the duty to prepare an ITO accurately must not be taken lightly, the Affiant was not required to review the witness statements personally, or to look behind the summaries provided to him by other officers, because there was no indication that anything was amiss in the information he was given. In addition, I note that the Affiant cited the sources of most of the information contained within the ITO, and that he included a variety of points which did not support granting the Warrant.

[57] The fact that two of the errors in the ITO arose from information that the Affiant received from other officers does not constitute a failure to fulfill his duty of full, frank, and fair disclosure. Having said that, I agree that the errors at paragraphs 14(f) and 20(d) related to matters of substantive significance, namely the timing of the Shootings and the identification of the accused, which could undercut the probability that evidence would be found on the Phone.

[58] As referenced above, I have concluded that the majority of the references to the Other Shooting were included in the ITO appropriately, and constituted full, frank, and

---

[4] ***R. v. Tekleab***, 2023 MBPC 51, at paragraph 45, citing ***R. v. Plant***, [1993] 3 SCR 281, at p. 298; and ***R. v. Richards***, 2016 ABQB 176.
[5] ***World Bank Group v. Wallace***, 2016 SCC 15, at paragraph 123.

fair disclosure of relevant information known to police at the material time. The references to the Other Shooting that I have excised from the ITO are ancillary to the question of whether evidence would be found on the Phone that related to the Shootings. Potential involvement in two shootings is a quantitative, not qualitative, ground to search the Phone. In other words, any valid basis to issue the Warrant relative to the Shootings would remain irrespective of references to the Other Shooting in the ITO.

[59] After accounting for the redactions and amplifications that I have ordered, I note that the ITO reflected the following details:

a) police learned that a group of four young males were walking around the community, and video surveillance enabled the police to follow the group around the neighbourhood of the Shootings;

b) on January 14, 2023, at around 11:34 p.m., police were called to the scene of the Other Shooting, and were advised that two males ran away[6] from the scene, one of whom had a "big gun";

c) on January 15, 2023, at around 12:04 a.m., four males were seen on surveillance video at the Hotel;

d) the Hotel bar owner recognized the males as "all Campbells from Moose Lake", and the Hotel surveillance video showed that one of the males was wearing a maroon hoodie with a white crest;

[6] The ITO also reflects that some witnesses said the males fled in a black Jeep.

e) the Affiant believed that the same group of males was seen at around 12:12 a.m. on surveillance video from a nearby residence, and by a witness who said that one of the group threatened to pull out a "gat"[7] and shoot him;

f) a witness heard gunshots near the scene of the Shootings;

g) at 12:34 a.m., the same group of four males was seen entering a residence, and one of them was carrying a long gun;

h) the accused was arrested that morning for an unrelated incident in the neighbourhood of the Shootings, and was brought into cells at 1:23 a.m. wearing a maroon hoodie with a white crest, consistent with one of the males on the Hotel video;

i) another individual was arrested that morning, and identified both himself and the accused on the Hotel video; and

j) police recovered multiple .22 calibre shell casings from the scenes of the Shootings and of the Other Shooting, though the testing thereof was pending and there was no evidence linking the shell casings to each other.

[60] On the basis of the foregoing, and having considered the amplified record as a whole, I have concluded that the ITO reflected more than a mere suspicion that the accused was one of the four males observed at the Hotel and on other surveillance video near the scene of the Shootings, and that one of the males was in possession of a firearm.

[7] The ITO reflects that "gat" is a street reference to a "gun".

[61] With respect to the Phone specifically, the ITO reflected that the accused was arrested on February 1, 2023, with the Phone on his person and that:

a) the Affiant requested the Warrant to examine the Phone because he believed that it would contain information to assist the investigation by identifying who the accused was in contact with at the time of the Shootings, or who he communicated with about the Shootings;

b) the Phone could contain evidence including electronic communications, calls logs and images and videos;

c) an examination of the Phone could attribute evidence, confirm alibis or statements, determine intent, or exclude people who may be suspected wrongly;

d) when multiple suspects are involved in an investigation, the communication between them can assist the investigation greatly; and

e) the Affiant believed that the Phone would contain communications including call logs, text or other messages, and pictures or videos made around the time of the Shootings.

[62] I appreciate that the law requires some link between the criminal activity and the thing to be searched. In this case, for the Warrant to be valid, there must have been a nexus between the Shootings and the Phone, though common sense inferences may be drawn when determining whether that nexus exists[8]. In addition, the law is clear that police can search for something that could reasonably be believed to be evidence of the

[8] ***Beckles***, at paragraphs 192, 193, and 196.

commission of the crime, including the circumstances of the offence, the identification of the persons involved, a motive or intention related to the offence, and possible defences.

[63] In paragraphs 38 and 39 of the Decision, I quoted ***R. v. Fearon***, 2014 SCC 77, and ***R. v. Wahabi***, 2024 MBCA 70, where the courts commented upon the wealth of information that can be obtained from cellular phones, and the "self-evident and readily understandable" nexus between individuals' communications and police investigations. In other words, the law is clear that cellular phones can contain significant evidence of offences including photos, location information, and communications with others.

[64] I note that in this case, the accused did not have the Phone on his person when he was arrested regarding an unrelated incident on the morning of the Shootings. As I stated in the Decision, however:

> [80] … the absence of the Phone on the accused's person at the time of his arrest that morning does not necessarily lead either to the conclusion that he did not have it with him at the time of the Shootings, or that it would not contain details of who, if anyone, the accused may have communicated with about the Shootings. In other words, in my view, whether the accused had the Phone with him at a particular moment in time, including his arrest on January 15, 2023, was not material and would not reasonably impact the Affiant's expressed belief that searching the Phone would assist in the investigation.

[65] Put another way, there was a nexus between the Shootings and the Phone because there the accused was tied to the Shootings and the Phone was in his possession when he was arrested.

[66] Having taken into account all of the above-referenced redactions and amplifications, I have concluded that the content of the ITO reflected a sufficient evidentiary basis upon which the authorizing justice could have been satisfied that the

statutory preconditions for issuing the Warrant existed. More specifically, I accept that they could have concluded that there were reasonable grounds to believe that the Phone might contain information that would assist the police investigation, on the strength of the ITO as redacted and amplified. In other words, it reflected a credibly-based probability that evidence relevant to the Shootings would be found on the Phone.

[67] As such, the accused has not demonstrated, on a balance of probabilities, that the ITO was insufficient to establish reasonable grounds for the issuance of the Warrant. The totality of the circumstances set out in the redacted and amplified ITO disclosed reasonable grounds to believe that an offence was committed, and that evidence thereof would be found on the Phone.

Conclusion

[68] There were reasonable grounds to issue the Warrant, and the Warrant was not invalidated due to errors and omissions, or a failure to make full, fair, and frank disclosure.

SECTION 24(2)

[69] As referenced above, the Crown conceded that the Warrant was facially invalid, and as such the search of the Phone was a warrantless search that breached the accused's s. 8 ***Charter*** rights.

[70] In addition, as set out in the Decision, I determined that police did not file the Report to Justice ("RTJ") arising from the seizure of the Phone as required by the ***Code***, which constituted a violation of the ***Charter***. More specifically, despite efforts

made shortly after the Phone was seized on February 1, 2023, the RTJ was not accepted for filing until March 31, 2023.

The Law

[71] Section 24(2) of the ***Charter*** requires that evidence be excluded where it is obtained in a manner that infringed or denied a ***Charter*** right, and admitting the evidence would bring the administration of justice into disrepute.

[72] The accused bears the onus of establishing both aspects of this test on a balance of probabilities (***R. v. Henrikson (W.O.)***, 2005 MBCA 49, at paragraph 17).

[73] In ***R. v. Grant***, 2009 SCC 32, the court determined that there are three factors to be assessed and balanced when considering the admissibility of evidence under s. 24(2):

a) the seriousness of the ***Charter*** infringing state conduct;

b) the impact on the ***Charter*** protected interests of the accused; and

c) society's interest in an adjudication on the merits.

[74] With respect to the first factor, the more serious or deliberate the infringing conduct is, the greater the need for the court to dissociate itself from that conduct. Good faith conduct by police may attenuate the seriousness of the breach (***Grant***, at paragraphs 72 - 75).

[75] With respect to the third factor, in ***R. v. Chan***, 2013 ABCA 385, the court stated:

> [49] However, we consider society's interest in the adjudication of the merits to be greater where the offence is one that so literally involves the safety of the community. …
>
> [50] Clearly, the proper interpretation of *Charter* rights cannot be charge-dependent such that they will be enforced in some cases, but not others. However, when the offence strikes at the very stability and security of the

> community, the court must recognize that the public interest in an adjudication on the merits is heightened and that the decision to exclude reliable evidence critical to a prosecution is more likely to have a detrimental impact on the repute of the administration of justice. As has been noted in another context, the *Charter* is not a suicide pact.; Application under s. 83.28 of the *Criminal Code* (Re), 2004 SCC 42, [2004] 2 SCR 248 at para 6.

[76] In addition, in ***R. v. Clairoux***, 2018 ONCA 629, the court stated:

> [13] The s. 24(2) analysis begins from the premise that the *Charter* breach at issue has already done harm to the administration of justice. … In considering whether the improperly obtained evidence should nonetheless be admitted under s. 24(2), the question is whether the admission of the evidence will do further damage: *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353, at paras. 69-70.

Position of the parties

Defence

Seriousness of state conduct:

[77] The accused submitted that no explanation has been given for the lack of an expiry date on the Warrant, or the failure to file the RTJ appropriately. The accused acknowledged that good faith on the part of the police may attenuate the serious of a breach (***Grant***, at paragraphs 72 - 75), but argued that the breaches in this case were serious, which weighs in favour of exclusion of the evidence obtained from the Phone.

Impact of breaches on accused's interests:

[78] The accused pointed to ***R. v. Bryce***, 2009 CanLII 45842 (ONSC), where the court stated that the impact of police conduct is examined from an accused's perspective. The accused argued that a person's phone is the most private thing in their life, in that it can contain an immense amount of personal information that goes to the core of their human dignity and privacy. As such, the ability to search it is significantly intrusive and there is a high standard applied to the ability to do so.

Society's interest in adjudication on merits:

[79] The accused conceded that the reliability of the evidence obtained on the Phone is not an issue in this case. Having said that, he submitted that if the evidence obtained on the Phone is excluded at trial, the Crown has other evidence upon which it will rely to seek to convict the accused. More importantly, the accused argued that the evidence obtained from the Phone should not be admitted, particularly given the serious nature of the charges before the court. The accused noted the comments of the court in ***R. v. Feeney***, [1997] 2 S.C.R. 13, that every accused is entitled to the full protection of the ***Charter***, regardless of the nature of the charges against them. In addition, as the court stated in ***R. v. Swanson***, 2022 MBQB 138, the public "has a vital interest in having a justice system that is above reproach, particularly where the penal stakes for the accused are high".

Crown

Seriousness of state conduct:

[80] The Crown submitted that there was no bad faith or malice present relative to either of the breaches. In addition, in the totality of circumstances the state conduct was not such that the evidence should be excluded to disassociate the court from ill-conduct.

[81] More specifically, the Crown argued that the facial invalidity of the Warrant was a technical error and that the warrantless search was inadvertent. In addition, the explanation for the lack of expiry date on the Warrant is self-evident from paragraph 47(k) of the ITO, wherein the Affiant explained why no expiry date was requested. More specifically, the Affiant explained that the length of time it takes to perform a

digital forensic examination of a phone depends upon a number of factors, such that placing time limitations upon the examiners can be problematic.

[82] The Crown acknowledged that identifying a timeframe within which to seize the Phone from the police locker would have been preferable, but that the lack of an expiry date is a technical deficiency that may have been caused by an over-extrapolation of the time the analysis would take, as opposed to the time within which the Phone would be taken from the locker. The Crown noted that the data was extracted from the Phone within a reasonable time of the initial seizure, and there is no evidence that police attempted to prolong their possession of the Phone.

[83] The Crown submitted that the failure to file the RTJ in compliance with the ***Code*** related to an administrative task. Moreover, the Phone was physical evidence that was seized lawfully, the accused's privacy interests were not placed in jeopardy, and the Phone was not accessed immediately or without a warrant.

Impact of breaches on accused's Charter protected interests:

[84] The Crown conceded that the impact of the warrantless search of the Phone constituted a serious impact on the accused's s. 8 rights.

[85] With respect to the failure to file the RTJ, the Crown noted that the accused knew the Phone had been seized and was aware of what police were doing with it, yet he made no effort to apply for its return. In addition, the electronic messages recovered from the Phone were discoverable regardless of the failure to file the RTJ.

Society's interest in adjudication on merits:

[86] The Crown argued that the charges are very serious, and that the allegations against the accused are terrifying, in the sense that two innocent, unrelated victims

appear to have been gunned down, with no apparent motive or explanation. Sergeant Amirault testified on the *voir dire* about the mood in the community following the Shootings, and community impact is an important consideration that relates to community safety. The public deserves an opportunity for the accused to be tried on the merits of the charges.

[87] In addition, the Crown submitted that the impugned evidence is real, reliable, imminently discoverable, and necessary to the Crown's case. More specifically, the search of the Phone revealed four exchanges as between the accused and other individuals on each of January 23 and 24, 2023, upon which the Crown seeks to rely at trial. Without those exchanges, there is no direct evidence of the accused's involvement in the Shootings, and only circumstantial evidence will remain, including video surveillance and DNA found on a beverage can at the scene. In addition, the Crown noted that the main witnesses in this matter are related to the accused and may have loyalty to him. In other words, serious damage would result from excluding the Phone.

Analysis

[88] With respect to the first factor, I accept that the Phone and its contents were obtained in good faith, albeit imperfectly, and that the police were neither ignorant nor wilfully blind of ***Charter*** standards given that the Warrant was obtained.

[89] Moreover, the law is clear that not all ***Charter*** breaches are serious. Here, the facial deficiency of the Warrant was technical in nature and did not compromise its integrity or the basis for granting it. Similarly, efforts were made to file the RTJ

promptly, which were unsuccessful. Ultimately, the RTJ was accepted for filing, although it was not filed as soon as practicable as required by the ***Code***.

[90] In addition, there was no causal relationship between the breaches and the impugned evidence, which is not required, but is an important factor for my consideration[9].

[91] On the basis of the foregoing, I have concluded that the infringements were not serious, and that the state conduct was akin to a series of technical errors, which favour inclusion.

[92] With respect to the second factor, I agree with counsel that the impact of the warrantless search of the Phone constituted a serious impact on the accused's s. 8 rights. I note the comment of the court in ***Morelli***, at paragraph 2, that "It is difficult to imagine a search more intrusive, extensive, or invasive of one's privacy than the search and seizure of a personal computer." This factor favours exclusion of the evidence.

[93] Having said that, the late filing of the RTJ did not have a real impact on the accused's ***Charter*** protected interests. There is no evidence that he attempted to have the Phone returned to him after the seizure but before the RTJ was filed.

[94] With respect to the third factor, as referenced above, the reliability of the evidence is not at issue, which favours inclusion.

[95] I accept that the data retrieved from the Phone is important to the Crown's case, given the assertion that the Phone contained the only direct evidence linking the

[9] ***R. v. Mack***, 2014 SCC 58, at paragraph 42.

accused to the Shootings. Having said that, I recognize that at this stage I have limited information regarding the nature of the other evidence against the accused.

[96] As referenced in ***Chan***, the community impact factor is heightened when an offence strikes at the safety of a community as the Shootings did, because excluding the evidence would have a greater impact on the community than in the average case. I am also mindful, however, of the comments in ***Swanson*** that the seriousness of the alleged offences is a valid consideration that cuts in two directions, because although the public has a heightened interest in a serious matter being determined on its merits, it also has a vital interest in having a justice system that is above reproach.

[97] Having considered the foregoing, I have concluded that the third factor favours the inclusion of the evidence in this case.

[98] After balancing the three ***Grant*** factors, and considering the above-referenced comments in ***Clairoux***, I have concluded that the admission into evidence of the messages found on the Phone would do no further harm to the administration of justice than has already been done. Put another way, admitting the evidence found on the Phone would not bring the administration of justice into disrepute.

Conclusion

[99] The evidence obtained from the Phone is admissible.

CONCLUSION

[100] The accused's motion to exclude evidence is denied.

_____

J.