

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Knott*, 2021 NSSC 255

Date: 20210901

Docket: *Halifax*, No. CRH-496919

Registry: Halifax

Between:

Her Majesty the Queen

v.

James Knott

SEARCH DECISION

Judge: The Honourable Justice Kevin Coady

Heard: August 19, 2021, in Halifax, Nova Scotia

Written Decision: September 1, 2021

Counsel: Maile Graham-Laidlaw for the Respondent
Matthew Kennedy for the Applicant

By the Court:

[1] Mr. James Knott stands charged:

THAT on or about the 19th day of June, 2019, at or near Dartmouth, Province of Nova Scotia, he did unlawfully have in his possession, for the purpose of trafficking, Cocaine (benzoylmethylecgonine), a substance included in Schedule I of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and did thereby commit an offence contrary to Section 5(2) of the said *Act*;

AND FURTHER that he at the same time and place aforesaid, did unlawfully have in his possession Oxycodone (Endocet), a substance included in Schedule I of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and did thereby commit an offence contrary to Section 4(1) of the said *Act*;

AND FURTHER that he at the same time and place aforesaid, did unlawfully have in his possession a prohibited weapon, to wit., a switchblade knife, without being the holder of a license under which he may possess it, contrary to Section 91(2) of the *Criminal Code*.

Mr. Knott brings an application alleging that the search of his residence breached his s.8 *Charter* rights, and as such, the fruits of that search be excluded from his trial pursuant to s.24(2) of the *Charter*.

[2] On June 18, 2019 investigators applied for and were granted a warrant to search Apartment 8, 69 Farrell Street, Dartmouth. The Information to Obtain (ITO) was based on information from two sources of proven reliability, as well as further investigations. The search resulted in the seizure of drugs and a weapon at apartment 8, 69 Farrell Street, Dartmouth.

[3] The source qualifications at paragraphs 14 and 15 of the ITO state as follows:

- a. I have known Source "A" for no less than two years in the capacity of a source;
- b. The information provided by Source "A" has been corroborated by investigation, physical surveillance and information provided by other sources.
- c. Source "A" freely associates with persons involved in criminal activity and has personal knowledge of the information obtained herein based on conversations and observations of persons involved, specifically identified in this document is James KNOTT, unless otherwise stated.
- d. Past information provided by Source "A" has resulted in no less than five (5) arrests where charges were laid under the CDSA or the *Criminal Code*. In no less than five (5) instances, "Source A" provided information on location of wanted persons who were sought for arrest on outstanding files or who had outstanding warrants of arrest. As a result of the information provide by "Source A" the parties were arrested.
- e. Past information provided by Source "A" has not provided any information which resulted in any positive searches (through the execution of CDSA and/or *Criminal Code* search warrant(s) and/or searches incidental to arrest(s)).
 - i. A "positive search means that the source information led to a search where the evidence seized was consistent with the source information.
- f. Source "A" has provided information that has led to two (2) negative searches.
- g. Source "A" has a criminal record.
- h. Source "A" does not have any convictions for offences relating to their credibility such as perjury, obstruction, fraud or misleading police.
- i. I am in regular contact with Source "A".
- j. Source "A" is financially motivated.
- k. I believe Source "A" to be reliable.

15. On the 3rd of June, 2019, I spoke with Detective Constable Jeff Seebold who handles "Source B", Detective Constable Seebold offered the following information regarding the reliability of Source "B".
- a. He has known Source "B" for no less than either years in the capacity of a source;
 - b. He maintains regular contact with Source "B" with telephone calls and face to face meetings;
 - c. Source "B" has provided information on no less than seventy (70) occasions that has resulted in the seizure of controlled drugs and property which resulted in the laying of charges under the *Controlled Drugs and Substances Act* and the *Criminal Coad of Canada*.
 - d. Source "B" does have a criminal record and has never provided false or misleading information;
 - e. Source "B" has been paid in the past and is financially motivated;
 - f. Source "B" has personal knowledge of the information contained herein, based upon conversations and/or observations with the persons involved, specifically identified in this document as James KNOTT, unless otherwise stated;
 - g. Source "B" volunteers information to the Police based on anonymity, and is not willing to act as an Agent for the Halifax Regional Police or testify against any of the named persons in this Warrant.

These were not anonymous tips, but rather, cultivated informants.

[4] On June 3, 2019 Source "A" provided the Affiant with the following information:

- Jim lives at 69 Farrell Street
- Jim routinely meets people at the bus stop by Primrose
- Jim sells crack
- Jim is a white male with a scruffy beard, salt and pepper longer hair, usually wears a ball cap, 5'9 or 5'10 with bluish green eyes.

[5] In June, 2019 Source “B” provided the following information to another Police Officer who passed it along to the Affiant on June 12th:

- Jim Knott is selling crack cocaine.
- He sells up and down on Farrell Street.
- He sells at the bus stop by Lawton’s Drugs on Primrose Street.
- He also sells at the Petro Canada on Victoria Road.
- He does Dial-a-Dope.
- He works off cell number 789-234-2834.

All of the information in the preceding two paragraphs is contained in the ITO.

[6] On June 11, 2019 the Affiant spoke to Source “B”’s handler and provided the following information:

- Jim Knott is selling crack cocaine.
- He sells by the path to Farrell Street and Showtime Video.
- He sells by the bus stop at Lawton’s Drugs.
- He was in possession of crack stones today.
- He was in possession of drugs for resale today.

All of this information was contained in the ITO.

[7] The ITO mentions that one RS who was known to be involved in the drug business. Since 2018 he had been a regular visitor to 69 Farrell Street. The

inference the Affiant wanted to establish was that RS was Mr. Knott's supplier of crack cocaine. RS has a dated prior conviction for drug trafficking.

[8] On June 17, 2019 the Affiant received the following information from Source "A":

- The black male with the black Volkswagen (RS) was at 69 Farrell Street today.
- He carried in a black back pack.
- He was there for over one hour.

On June 18, 2021 Source "B"'s handler provided the Affiant with the following information:

- James Knott is in possession of cocaine for the purposes of resale.
- James Knott was in possession of cocaine for the purpose of resale in the last 24 hours.

On the basis of all of the above ITO information a search warrant for apartment 8, 69 Farrell Street issued. The search was conducted on June 19, 2019.

[9] This application addresses whether the ITO contained reasonable grounds to search apartment 8, 69 Farrell Street. The authority to search is found at Section 11 of the *Controlled Drugs and Substances Act*. It states:

11 (1) A justice who, on ex parte application, is satisfied by information on oath that there are reasonable grounds to believe that

- (a) a controlled substance or precursor in respect of which this Act has been contravened,
- (b) any thing in which a controlled substance or precursor referred to in paragraph (a) is contained or concealed,
- (c) offence-related property, or
- (d) any thing that will afford evidence in respect of an offence under this Act or an offence, in whole or in part in relation to a contravention of this Act, under section 354 or 462.31 of the Criminal Code

is in a place may, at any time, issue a warrant authorizing a peace officer, at any time, to search the place for any such controlled substance, precursor, property or thing and to seize it.

The state's authority to search is at odds with an individual's right to be left alone, especially when it involves one's residence. Courts have decided that the balance is struck when the authorization to search is based on "reasonable grounds" and not a hunch or suspicion. Section 8 of the *Charter* guarantees everyone the right to be secure against unreasonable search and seizure.

[10] In *Hunter v. Southam*, [1984] 2 S.C.R. 145, the Supreme Court determined what constitutes reasonable grounds to believe. The Court concluded that the state's interest in detecting and preventing crime begins to prevail over the individual's interest in being left alone at the point where credibly-based probability replaces suspicion.

[11] The review of a search warrant begins from a premise of presumed validity. (*R. v. Sadikov*, 2014 ONCA 72). The onus is on the accused to demonstrate that the ITO in support of the warrant was insufficient (*R. v. Campbell*, 2011 SCC 32). The

appropriate standard is one of reasonable probability rather than proof beyond a reasonable doubt or *prima facie* case. The standard is one of reasonableness not correctness.

[12] In *R. v. Garofoli*, [1990] SCJ No. 115, the Supreme Court determined that a trial judge reviewing the sufficiency of an ITO does not substitute their view for that of the authorizing justice. The question is whether the issuing justice could have issued it. A reviewing judge should only set aside the warrant if satisfied on the whole of the material presented that there was no basis on which the warrant could be sustained.

[13] In *R. v. Wallace*, 2016 NSCA 79, the Court confirmed the proper test to be applied in the context of *Garofoli* challenges. Justice Beveridge stated at paragraphs 25 and 27:

[25] ... the reviewing judge or court does not determine whether the justice of the peace *should* have been satisfied on the evidence presented to him, but rather *could* he have been satisfied on the evidence set out in the ITO that there were reasonable and probable grounds for believing that the articles sought would be of assistance in establishing the commission of an offence and would be found in the premises sought to be searched (see: *Re Carroll and Barker and The Queen* (1989), 1989 NSCA 2 (CanLII), 88 N.S.R. (2d) 165 (N.S.S.C.A.D.)).

...

[27] A succinct and helpful statement of the test a reviewing judge is to apply was penned by Fichaud J.A. in *R. v. Shiers*, supra.:

[15] Based on these principles, the reviewing judge should have applied the following test. Could the issuing judge, on the material before her, have properly issued the warrant? Specifically, was there material in

the Information from which the issuing judge, drawing reasonable inferences, could have concluded that there were reasonable grounds to believe that a controlled substance, something in which it was contained or concealed, offence-related property or any thing that would afford evidence of an offence under the *CDSA* was in Mr. Shiers' apartment?

[14] In *R. v. Durling*, 2006 NSCA 124, the Court stated that a reviewing judge must accord significant deference to the issuing judges. This includes inferences made by the issuing justices. *Garofoli* directs that unless the reviewing judge determines there was no basis for the issuance of the warrant, he or she should not interfere. In doing this analysis, the reviewing Court must consider "the totality of the circumstances." In Mr. Knott's case it is apparent the issuing judge drew inferences from the presented material.

[15] Mr. Knott argues that the ITO did not disclose that evidence of drug trafficking would be found in apartment 8, 69 Farrell Street, Dartmouth. Both sources informed police that Mr. Knott was selling drugs on the street in various locations in Dartmouth and neither indicated they saw Mr. Knott coming or going from 69 Farrell Street, Dartmouth. Mr. Knott argues that assuming a person selling drugs on the street might keep drugs in their residence would be nothing more than suspicion. The ITO clearly indicated that Mr. Knott lived in apartment 8, 69 Farrell Street, Dartmouth. With respect, I disagree with this line of reasoning.

[16] The ITO clearly establishes that Mr. Knott was selling crack cocaine in north end Dartmouth in June, 2019. It firmly establishes that Mr. Knott lived in apartment 8, 69 Farrell Street. The ITO states that RS was a known drug trafficker and that he visited 69 Farrell Street on a regular basis, including on June 17, 2019. The following day Source “B” informed police that Mr. Knott was in possession of cocaine for the purpose of resale in the last 24 hours. The obvious inference to be drawn is that RS delivered drugs to Mr. Knott and that he was offering them for resale. It was a reasonable inference that he was operating out of his residence. This was a credibly-based probability and not just suspicion. In light of these conclusions, I dismiss Mr. Knott’s application.

Coady, J.