SUPREME COURT OF NOVA SCOTIA

Citation: *R.* v. *Wint*, 2022 NSSC 367

Date: 20221215
Docket: CRH 513337
Registry: Halifax

Between:

His Majesty the King

v.

Andrew Curt Wint

DECISION

Restriction on Publication: s. 5391(1) *Criminal Code*

Judge:	The Honourable Justice John A. Keith
Heard:	December 2, 2022, in Halifax, Nova Scotia
Counsel:	Jude Hall, for the Federal Crown Patrick MacEwen, for the Defendant

By the Court:

[1] On November 12, 2020, Constable Michael Gerald Robinson of the RCMP (Windsor Detachment) filed an Information to Obtain (ITO) with the Kentville Justice Centre in support of an application for a tracking warrant. Constable Robinson's sworn ITO was 15 pages in length and 42 paragraphs in total (the "**ITO**").

[2] That same day (November 12, 2020), Judge Rhonda Van Der Hoek of the Nova Scotia Provincial Court granted a "Tracking Warrant to Identify the Location of a Thing Usually Carried or Worn by the Individual" pursuant to section 492.1(2) of the *Criminal Code* and a related assistance order pursuant to section 487.02 of the *Criminal Code* (KJC#20-288). (the "**Tracking Warrant**")[1] The "thing" that the Tracking Warrant allowed police to follow was an electronic device (cell phone) associated with the number 782-232-5421.

[3] The preamble to the Tracking Warrant confirms that Judge Van Der Hoek was satisfied that:

1. There were reasonable grounds to believe that offences under the *Criminal Code* have been or will be committed and, more specifically, "possession for the purposes of trafficking cocaine, contrary to the *Controlled Drugs and Substances Act*." ("***CDSA***").
2. Tracking the individual's movements by identifying the location of the electronic device will assist in the investigation of the offence.

[4] The Tracking Warrant helped enable police to obtain additional judicial authorizations. Ultimately, on December 20, 2020, the police executed a search warrant at the residence of the accused, Andrew Wint. Mr. Wint was subsequently charged with various offences under the *CDSA*, *Cannabis Act,* and *Criminal Code*.

---

[1] I note that the Tracking Warrant states that it is based upon the information on oath of Constable Robinson dated November 9, 2020. In fact, the ITO was dated November 12, 2020, as indicated. Neither counsel argued that this inconsistency was determinative of anything although defence counsel contended that it was representative of a cavalier and somewhat careless approach revealed in other aspects of the ITO. I return to that issue below.

[5] In this motion, Mr. Wint argues that the grounds contained within the ITO (and upon which the Tracking Warrant was granted) were insufficient and breached his rights under section 8 of the *Canadian Charter of Rights and Freedoms* (the "***Charter***") Mr. Wint focusses on the contents of the ITO itself. He contends that the ITO does not contain reasonable and probable grounds sufficient to justify the Tracking Warrant. In other words, the ITO contains "facial" defects or is deficient "on its face".

[6] Mr. Wint further cites section 24(2) of the *Charter* in support of the proposition that the information and evidence which was subsequently obtained on the strength of an unlawful Warrant must be excised from the record and excluded from the trial.

[7] The Crown opposes this application and contends that the Tracking Warrant was validly issued.

THE LAW

[8] The legal principles applicable to a facial challenge of the ITO are not especially contentious and may be summarized as follows:

1. Section 8 of the *Charter* confirms that: "Everyone has the right to be secure against unreasonable search or seizure." It is notable that section 8 does not prohibit any search and seizure. Rather, it secures the right against **unreasonable** search and seizure. The apparent simplicity of that single, qualifying word "unreasonable" belies a much more complicated debate around two intertwined but competing concerns that lie at the heart of this *Charter* right. On the one hand, the public maintains a vitally important interest in preventing crime and preserving public safety. The police must have access to the investigative tools necessary to achieve these objectives. At the same time, crime prevention and public safety cannot completely engulf an individual's privacy interests or entitle the state to operate in the background, without restrictions, silently engaged in surveillance of an individual's private information. The two introductory paragraphs words of Fish, J's decision in *R* v *Morelli*, 2010 SCC 8 ("***Morelli***") bear repeating:

> This case concerns the right of everyone in Canada, including the appellant, to be secure against unreasonable search and seizure. And it relates, more particularly, to the search and seizure of personal computers.
>
> 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.
>
> (at paragraphs 1 – 2)

2. Section 492.1 (2) of the *Criminal Code* addresses this underlying tension by creating statutory preconditions which limit a justice's or judge's discretion to grant a warrant authorizing the police to track an individual's movements by accessing data which confirms the location of a thing (in this case, a cell phone). The justice or judge must be satisfied by information on oath that there are objectively reasonable grounds to believe that:
   a. An offence "has been or will be committed under [the *Criminal Code*] or any other Act of Parliament"; and
   b. Tracking the individual's movement by identifying the location of the "thing" (here, a cell phone) "will assist in the investigation of the offence"; and
   c. The "thing" is "usually carried or worn by the individual" in question.
3. Once the warrant is issued based on sworn evidence placed before a justice or judge, the warrant is presumed to be valid. At that point, the burden falls upon the accused to demonstrate that the warrant is invalid (e.g. that his section 8 *Charter* rights were violated because the grounds contained in the ITO were insufficient). See *R* v *Sadikov*, 2014 ONCA 72 at paragraph 83 and *R* v *Campbell*, 2011 SCC 32 at paragraph 14.
4. The presumptively valid decision of the judge who granted the original warrant is entitled to deference. Thus, "[t]he reviewing judge does not stand in the same place and function as the [original] authorizing judge. He or she does not conduct a rehearing of the application …" (*R* v *Araujo*, 2000 SCC 65 ("***Araujo***"). Similarly, the issue upon review is **neither**:

a. whether the reviewing judge would have issued the warrant (*R* v *Durling*, 2006 NSCA 124 ("***Durling***") at paragraph 22; and *R* v *Vu*, 2011 BCCA 536 ("***Vu***") at paragraph 33); **nor**

b. whether the original judge should have issued the warrant.

Rather, the issue upon review is whether the original judge "could have granted" the warrant based on the evidence before him or her. (*Araujo* at paragraph 51, quoting from *R* v *Garofoli*, [1990] 2 SCR 1421 ("***Garofoli***") at paragraph 56, emphasis added in the *Araujo* decision; see also *R* v *Bacon*, 2010 BCCA 135 at paragraph 25; leave to appeal refused, 2010 SCCA No 213)

5. A form of deference is similarly extended to the inferences that may be drawn from the evidence. The original, authorizing judge may draw reasonable inferences based on the evidence. The reviewing judge's role is only to consider whether an inference is reasonable – and not substitute one otherwise reasonable inference for another, preferred inference (*Durling* at paragraph 27 and *Vu* at paragraph 40).

6. As to the standards that inform whether the Court's approach when considering whether the original, authorizing judge could have had reasonable grounds for believing that the necessary statutory pre-conditions were met based on the evidence presented in the ITO, I note:

a. The grounds and evidence presented in support of a warrant must be sufficient in the totality of the circumstances to reach "the point at which credibly-based probability replaces suspicion". The origins of this phrase ("credibly-based probability") can be traced back to the decision of Dickson, J (as he then was) in *Canada (Director of Investigation & Research, Combined Investigation Branch* v *Southam Inc.*, [1984] 2 SCR 145 at page 167; and it has since become a fixture in the relevant jurisprudence (see, for example, *Morelli* at paragraph 128 and *Chehil*, at paragraph 22 and *Durling* at paragraph 17). In *Mugesera* v *Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, the Supreme Court elaborated on this evidentiary standard:

> The standard of "reasonable grounds to believe" requires something more than mere suspicion but less than the civil standard of proof on a balance of probabilities. "Reasonable grounds will exist where there is an objective basis for the

> belief which is based on compelling and credible information." The standard has been described as one of "credibly-based probability", "reasonable probability" or "reasonable belief". The phrase must be interpreted contextually. A determination of whether "reasonable grounds" exists requires a consideration of the totality of the circumstances and an assessment of the facts is made on a practical, non-technical and common sense basis. The person deciding whether the reasonable grounds standard has been met is entitled to put 'two and two together'.
>
> (at paragraph 113)

b. Errors in the information presented to the authorizing judge, whether advertent or even fraudulent, are factors to be considered in deciding whether to set aside the authorization. However, the presence of errors, in and of themselves, do not automatically invalidate the warrant: *Bisson* (1994), 94 C.C.C. (3d) 94 (S.C.C.). The Court may resort to the remedies of "excision" or "amplification" to correct mistakes contained in an ITO. The Court would then consider whether the remaining, corrected evidence contains reasonable and probable grounds such that the original, authorizing judge could have issued the warrant. But if the mistakes are so egregious as to "'[subvert] the pre-authorization process through deliberate non-disclosure, bad faith, deliberate deception, fraudulent misrepresentation or the like', a court has the 'residual' discretion to set aside the search warrant, even if there would have been reasonable and probable grounds…." (*R* v *Booth*, 2019 ONCA 917 at paragraph 65 and the preceding discussion at paragraphs 56 – 64. See also, *Morelli* at paragraphs 41 – 43; and Araujo at paragraphs 55 – 59). These types of concerns are typically raised where the Defendant alleges a "sub-facial" defect and involves a review of evidence outside the four corners of the ITO. In this case, it is unnecessary to further examine the issues of excision, amplification or, in more serious cases, setting aside the warrant altogether. Again, the Defence alleges that the ITO is facially (not sub-facially) deficient;

c. The Court does not undertake a compartmentalized assessment of every discrete piece of evidence. Rather, the Court considers the cumulative or overall impact of the evidence,

having regard to the relevant principles and factors. Put differently, the Court zooms out and surveys the totality of the admissible evidence, in all of the circumstances. "[I]t is important that the Information be examined as a whole and not one piece of evidence at a time, because each piece of evidence colours other pieces of evidence and a fuller picture emerges by considering all of the evidence together" (*R* v *Lam*, 2002 BCCA 99 at paragraph 10).

7. As to the quality of the evidence which is relevant to the overall assessment:

    a. At least three questions must be addressed: "First, was the information predicting the commission of a criminal offence compelling? Second, where that information was based on a "tip" originating from a source outside the police, was that source credible? Finally, was the information corroborated by police investigation prior to making the decision to conduct the search?" (*R* v *DeBot*, [1989] 2 SCR 1140 ("***DeBot***") at paragraph 60). Here again, it is important to repeat the Court's approach to the evidence. The Court does not approach the three discrete factors referenced in *DeBot* (i.e. is the evidence compelling? credible? corroborated?) as if they were separate and essential elements, each of which must meet an established evidentiary standard. Indeed, concerns in respect of credibility, for example, might be offset by corroborating evidence. As such, again, the Court considers the overall impact of the relevant evidence. The "'totality of the circumstances' must meet the standard of reasonableness. Weaknesses in one area may, to some extent, be compensated by strengths in the other two" (*DeBot*, at paragraph 60. See also *Garofoli* at paragraph 80).

    b. The following considerations bear upon the various factors bearing in mind, again, that the assessment is based on the overall totality of the evidence:

        i. Is the evidence compelling? The Crown cannot rely solely upon bald, conclusory statements. Similarly, rumour, gossip or mere suspicion are not enough. Reasonably grounded beliefs must be anchored in sufficiently detailed evidence (*DeBot* at paragraphs 61 - 62; *R* v *Chehil*, 2013

49 ("***Chehil***") at paragraphs 22 – 23; and *R* v *Capson*, 2019 NSSC 20 at paragraph 45). The source of the information (e.g. whether the informer's knowledge was first-hand and current) are also relevant considerations (*R* v *Chioros*, 2019 ONCA 388 ("***Chioros***") at paragraph 24). Information which is readily available to the public or describes otherwise ordinary events (e.g. a car being parked in a suspect's driveway) lacks the detail that makes evidence compelling (*R* v *Demirovic*, 2022 NSCA 56 ("***Demirovic***") at paragraph 26 and *Chioros* at paragraph 20). By the same token, the Crown is not required to mechanically insert formulaic statements solely for the purpose of satisfying the legal test. Thus, "Where the grounds set out in an ITO are capable of satisfying a judge of the peace as to the existence of a particular, reasonable belief, the absence of an express statement by the informant as to that belief is not fatal" (*Vu* at paragraph 38).

ii. Is the evidence credible? Without intending to be exhaustive, the concerns which may enhance or diminish a source's credibility include:

   a. Whether the informer is being paid or receiving a benefit in exchange for providing information (*DeBot* at paragraph 66);

   b. The informer's source of knowledge;

   c. Past performance, or whether the informer has established a demonstrable track record for providing reliable evidence. If the person is "an untried informant", credibility wanes and the Court will look for greater corroboration (*DeBot*, at paragraph 66); and

   d. Whether the informant has a criminal record. Prior convictions such as perjury, obstruction of justice or public mischief would obviously be relevant and troubling. (*Demirovic* at paragraph 25 quoting with approval from the earlier decision of *R* v *Simon*, 2020 NSCA 25 ("***Simon***") at paragraph 31)

> This factor becomes somewhat more complicated when the informant is a confidential police source. Any information which might expose the informant's identity is understandably protected. It is for this reason that corroborating evidence is often found to be intertwined within the credibility analysis (see, for example, *Debot* at paragraph 66). "The level of verification required may be higher where the police rely on an informant whose credibility cannot be assessed or where fewer details are provided and the risk of innocent coincidence is greater." (*Debot* at paragraph 70). See also paragraph 26 of *Demirovic* where the Nova Scotia Court of Appeal observed that corroboration may become crucial where there is a lack of compelling evidence and the informer's reliability is unknown.
>
> iii. Is the evidence corroborated? The police do not have to verify every statement made by a source so long as the evidence is sufficient to justify the warrant and, for example, "remove the possibility of innocent coincidence" (*Debot*, at paragraph 70). Evidence of independent police observations or counter-surveillance including "objective evidence, such as police records" is helpful (*Chioros* at paragraph 20).

APPLICATION OF THE LAW

[9] This is a challenging case. Respectfully, the ITO presented by the police in support of a tracking warrant does contain a number of omissions and careless mistakes. It is also very weak in terms of the police's own efforts at counter-surveillance and corroboration.

[10] Having said that, the detailed evidence offered by the confidential informers is very compelling. In addition, while there are definite issues around the credibility of the confidential informers, there are offsetting strengths, including one confidential informer whose track record is strong. In addition, the information obtained separately from these informers contain key overlapping details which triangulate around a single "dial-a-dope" mobile drug business operated by a person using the pseudonym "Tommy" who uses the telephone number (782-232-5421) to

sell cocaine and crack cocaine from a car in parking lots close to exits off Highway 101 between Sackville and New Minas, Nova Scotia.

[11] Before addressing the three *DeBot* factors discussed above (is the evidence compelling? credible? corroborated?), it is useful to repeat certain key guiding legal principles:

1. Once a warrant is issued based on sworn evidence placed before a justice or judge, the warrant is presumed to be valid. In this motion, the burden falls upon the accused to demonstrate that the warrant is invalid (e.g. that his section 8 *Charter* rights were violated because the grounds contained in the ITO were insufficient);
2. The presumptively valid decision of the judge who granted the original warrant is entitled to deference. My task upon review is only to determine whether the original judge "could have granted" the warrant based on the evidence before him or her. A form of deference is similarly extended to the inferences that may be drawn from the evidence;
3. The Court considers the overall impact of the evidence and asks whether the totality of that evidence reaches "the point at which credibly-based probability replaces suspicion". That standard is obviously more onerous than simply a hunch or intuition but it is less than even the civil standard of proof on a balance of probabilities;
4. The evidence is to be considered in its totality. Weaknesses in one *DeBot* factor may (or, at times, must) be offset by strengths in another *DeBot* factor. The Court steps back and considers the overall impact of the evidence, having regard to the applicable principles and factors.

[12] Before addressing the specific *DeBot* factors, it is necessary to comment briefly on particular weaknesses in the ITO. This documents contained several errors and omissions and reveals a certain carelessness on the part of the police. This is unfortunate, given the seriousness of the relief sought which seeks to surreptitiously delve into an individual's private information. For example, the last sentence in paragraph 6 relates to an earlier proceeding and has no relevance to (or place in) the ITO. There are also noticeable omissions. The ITO speaks about a Constable Kennedy and Constable MacDonald being told about a black male suspected of selling drugs in the Annapolis Valley and driving a gray hatchback. But it does not explain how they associated this person named "Tommy" with a

"large black male" in a white hatchback speaking to a person (Roland Rogers) known to be involved in the drug trade on Commercial Street in New Minas.

[13] Similarly, the ITO does not explain how the accused is objectively connected to the information regarding cars being rented by another person with an extensive criminal record (Mr. Daher). Constable Robinson's ITO does not provide any information regarding Mr. Daher's appearance or age. And he does not provide any additional detail connecting the accused, Andrew Wint, with Mr. Daher. In his "Summary and Conclusion" section, Constable Robinson merely offers the following opinion:

> Based on my experience as a drug investigator, I believe that the rental of a vehicle to facilitate the trafficking of drugs is not an uncommon practise. The driver of a rental vehicle is not easily identified by police as the vehicle is registered to the rental company. This adds a level of anonymity to the trafficker and adds additional steps for the police during an investigation to establish their identity. I believe that it is also not uncommon for those involved in criminality who are renting vehicles that they will frequently will change up their vehicles. This again adds a level of difficulty to the authorities when attempting to disrupt their illegal behaviour.

[14] This statement reflects the common-sense proposition that persons involved in criminal activity will naturally seek to hide their criminality. However, to go further and somehow infer that the accused is linked to criminal activity because an entirely different person with a clear criminal background is renting cars to sell drug would involve an almost arbitrary reversal of logic. I return to this issue below when discussing corroboration. For present purposes, suffice it to say that none of these errors or omissions are so egregious as to invalidate the warrant. In my view, while disappointing, they did not subvert the pre-authorization process through deliberate non-disclosure, bad faith, deliberate deception, fraudulent misrepresentation or the like.

[15] I turn now to the specific *DeBot* factors.

WAS THE EVIDENCE IN THE ITO COMPELLING?

[16] In my view, the evidence obtained by the police from Source A, Source B and Source C is very compelling.

[17] By way of summary:

1. Between September, 2020 and October, 2020[2], Source A, Source B and Source C separately provided the police with the following matching information:

    a. An individual named "Tommy" was currently and regularly selling pre-packaged cocaine and crack cocaine in the Annapolis Valley. In October, 2020, Source A described the product to Constable Robinson as "pre-packaged power and rock". Source A said that "Tommy" had cocaine and crack cocaine for sale within a week of speaking to the police in September, 2020. Source C added that "Tommy" was coming to the Annapolis Valley every day and that he was "moving" crack and cocaine in New Minas, Nova Scotia;

    b. "Tommy" operates his business from a car. Source B elaborated that Tommy was operating a "dial-a-dope" business;

    c. "Tommy's" phone number was 782-232-5421.

2. These confidential informers also provided the following additional and overlapping details regarding "Tommy's" identity, the product being sold and the method of doing business:

    a. Both Source A and Source B described "Tommy" as a black male;

    b. Both Source A and B stated that "Tommy" delivers the drugs in carpool parking lots. Source A elaborated that "Tommy" delivers to carpool parking lots or private parking lots just off Highway 101 between Lower Sackville and New Minas; and

    c. Both Source B and C stated that "Tommy" has a runner working for him. Source C said that the runner deals with the "after supper clients" and that he sells crack cocaine for between $100 and $200;

3. Source A offered further details regarding "Tommy's" business. Source A observed Tommy with digital scales, pre-packaged gram bags of cocaine and crack cocaine and a satchel of money. Source A also said that "Tommy" was selling a gram of cocaine for between $75.00 and $150.

---

[2] The precise date was redacted to protect Source B's identity.

[18] The details relate to how "Tommy" conducts business (dial-a-dope from his car); what specific drugs "Tommy" sells (cocaine and crack cocaine); where "Tommy" sells drugs (public parking lots near Highway 101 exits between Sackville and New Minas, Nova Scotia); and, importantly, the same telephone number which can be used to reach "Tommy" (782-232-5421).

[19] These details go beyond what other Courts have deemed to be lacking. For example, in *Simon*, the Nova Scotia Court of Appeal expressed particular concern that the confidential informers:

1. Did not say whether the accused was selling drugs out of his vehicle or at the workplace;
2. Provided inconsistent evidence as to the type of drug being sold;
3. Did not confirm the method of selling drugs (e.g. price and the specific location of drug deals).

(see paragraph 26 of *Simon*)

[20] By contrast, these are the types of details which three separate informers were able to offer. In this case, again, "Tommy" always sold drugs from a car. He always completed his transactions in public car lots close to Highway 101 exits between Sackville and New Minas. If the evidence merely said that "Tommy's" territory was anywhere between Sackville and New Minas, the evidence would be of minimal influence. However, "Tommy" operated in a more predictable manner, targeting parking lots close to a defined strip along a restricted access highway. "Tommy" only sold cocaine and crack cocaine. Source A provided the price range for cocaine.[3] Sources B and C provided a price range for crack cocaine. I have discounted the value of the evidence around pricing somewhat as the range given is quite wide. Nevertheless, this detail does offer some insight and helps support the reasonableness of Constable Robinson's belief. Importantly, again, all three informers had the same number for "Tommy", the person who they understood was selling cocaine and crack cocaine. It is reasonable to infer that they this is the number used to contact "Tommy" to access his "dial-a-dope" services.

WAS THE EVIDENCE IN THE ITO CREDIBLE?

[3] A more precise price "per gram" was redacted from the ITO out of concern it would identify Source A.

[21] Crown and defence counsel all agree that there are issues with credibility, particularly in terms of the track record for two of the three confidential informers. They disagree as to the severity of those issues.

[22] Source A and Source B have only been providing information to the police for a year or less. And at the time of the ITO, the information they gave the police had yet to result in a person being either charged or convicted. Also at the time of the ITO, their information assisted in obtaining two judicial authorizations, but only in respect of this same proceeding.

[23] Source C is a different story. Source C has a much lengthier record (5 years) of consistently providing reliable information to the police. Information received from Source C has led to an arrest and conviction.

[24] The background for each source is summarize below.

[25] Source A:

1. Source A is known personally to Constable Robinson, but for less than 1 year;
2. Source A has spoken to Constable Robinson eight (8) times and provided information as a confidential informer five (5) times;
3. Source A has first hand knowledge of the information provided, obtained through conversations and personal observations;
4. Source A freely associates with persons involved in criminal activity. Source A also has a criminal record which does not include convictions for "perjury, public mischief or obstruction of justice";
5. Source A is being paid for his information;
6. Source A has provided information which led to two (2) judicial authorizations related to this matter but has not provided information which has led to an arrest, charge or conviction
7. The ITO states that Source A's information "has been corroborated through police investigation, and through information provided by other confidential informants." No further details are provided.

[26] Source B:

1. Source B is not known personally to Constable Robinson, but is known to Constable Shawn Cornelisse. More specifically:

a. Constable Cornelisse has known Source B for less than a year; and

b. Source B has spoken to Constable Cornelisse five (5) times. It is not clear whether Source B provided information as a confidential informer on each occasion.

2. The ITO also states that Source B is "known" to Constable Jason Sehl, but does not state how long Constable Sehl has known Source B or how often they communicate;
3. Unlike Source A, the ITO does not say that Source B's knowledge is first hand. However, the ITO does state that Source B did provide information that was used in two (2) judicial authorizations related to this matter;
4. Source B freely associates with persons involved in criminal activity. Source B also has a criminal record which does not include convictions for "perjury, public mischief or obstruction of justice";
5. Source B is not being paid for his information. Source B is described "as civic minded and provides information to the police to fulfill that motivation.";
6. Source B has provided information which led to two judicial authorizations related to this investigation but has not provided information which has led to an arrest, charge or conviction; and
7. The information provided by Source B "has been verified and supported from other confidential informants and the observations made by police". No further detail is provided and I note that the wording used to describe how the quality of Source B's information has been checked ("verified and supported") is somewhat different from that of Source A ("corroborated").

[27] Source C:

1. Source C is not known personally to Constable Robinson but is known to Constable Ken Slade. More specifically:

a. Constable Slade speaks regularly to Source C;

b. Constable Slade has known Source C since 2018 although they lost contact for about 1 year. Their contact was renewed prior to (and was in place) at all times material to this matter.

2. The ITO also states that Source B is "known" to Constable Jason Sehl, but does not state how long Constable Sehl has known Source B or how often they communicate;
3. Unlike Source A, the ITO does not say that Source C's knowledge is first hand. However, the ITO does state that Source C:
   a. Provided information that was used in five (5) prior judicial authorizations and two (2) judicial authorizations related to this matter;
   b. Provided information that resulted in persons being arrested and charges being laid; and
   c. Never provided information that led to a negative search.
4. Source C freely associates with persons involved in criminal activity. Source C also has a criminal record which does not include convictions for "perjury, fabrication of evidence or public mischief". It is not clear why the phrase "obstruction of justice" used with Source A and Source B was replaced with "fabrication of evidence" for Source C;
5. The ITO states that the information provided by Source C "has been corroborated through police observations and information from other confidential informants". No further detail is provided.

[28] I agree that there are significant concerns regarding the backgrounds (or "pedigree") of Source A and Source B. They have no meaningful track record and, to the extent they have been able to provide useful, accurate information to the police, their experience is effectively limited to two (2) judicial authorizations in this same proceeding involving "Tommy".

[29] There are some more redeeming features to their respective backgrounds. For example, Source A's knowledge is first-hand and this person provided important details around "Tommy's" method of doing business. In addition, Source B provides information because this person is "civic minded". Source B is not paid for assisting the police. Nevertheless, there remain significant concerns regarding the credibility of Source A and Source B.

[30] The same type of concerns don't afflict Source C. Source C's history has the benefit of greater longevity with demonstrable success on other, unrelated matters which helped secure arrests and convictions.

[31] In addition, in my view, the credibility of these sources is enhanced by the degree to which they separately shared with the police overlapping, often identical evidence. The phenomenon of providing matching information that is not publicly available goes well beyond the possibility of an innocent coincidence. Overall, in my view, the concerns around the credibility of Source A and Source B are offset somewhat by the degree to which their evidence matches that of Source C, particularly with respect to those specific facts regarding to "Tommy's" drug operation.

WAS THE EVIDENCE IN THE ITO CORROBORATED?

[32] In my view, the police efforts at corroboration as reflected in the ITO is weak. While the evidence obtained from confidential sources is compelling, there is scant or, perhaps better put, very limited value in the police efforts at corroboration.

[33] At paragraphs 13 – 14 above, I mentioned a concern regarding the evidence of "Tommy" using rental cars. There was significant discussion in the ITO about the police efforts to determine who was renting certain cars used which they alleged were being used in "Tommy's" drug operation.

[34] The ITO properly points out the highly suspicious coincidence that all of the cars for which they connect to this drug business had Nova Scotia license plates which they were able to trace back to a single person renting vehicles from the same rental car agency on Kempt Road in Halifax. However, the single renter was not the accused and, for the same reason given in paragraph 14, the police evidence on this issue was of minimal value. Moreover, there is evidence that one of the two rented vehicles was being said to be used by "Tommy's" runner (not "Tommy").

[35] In terms of corroboration, the ITO also points to the police efforts to determine the name of the subscriber behind "Tommy's" telephone number (782-232-5421). The police determined that this phone number was associated with a pre-paid cell phone. The service provider was Telus and the subscriber was somebody named "Jill Smith" at 123 Main Street in New Minas, Nova Scotia. It is not clear from the ITO if this person or address even exists. If the police called this number (or attempted to have another person call this number), the results are not contained in the ITO.

[36] At best, Constable Robinson observes:

> It is my experience as an investigator that the use of a pre-paid cellular phone is common practice used by those in the drug trafficking industry. It is typical that the subscriber's name and address are not correct. That is so that it is difficult for police to detect and intercept them.

[37] In my view, as with Constable Robinson's comments regarding the use of rental cars in the drug business, Constable Robinson's statement is simply a common sense proposition that, respectfully, adds little to the evidence around corroboration. At best, it merely confirms that the police were not surprised by the absence of helpful information connecting the phone to "Tommy" (or anybody else other than a "Jill Smith" whose existence remains unknown). Beyond that, it is of very limited value.

[38] Overall, the corroborative evidence was minimal. Again, I accept that the police did collect evidence from a number of separate sources. Their detailed, compelling information coalesced around the business practises of a single drug dealer using a single telephone number. However, I am reluctant to place much weight at all on these investigative efforts as "corroboration" for the purposes of the *DeBot* factors. The phenomenon of various separate sources providing detailed evidence that is overlapping and matching on key pieces of information might well be viewed as corroborative. That said, in my view, the strength of this potentially corroborative evidence was already considered when assessing whether the credibility of the confidential informers. The Court should be extremely reluctant to "double count" or place undue weight on this evidence.

CONCLUSION

[39] As indicated, this is a difficult case. However, based on the totality of the evidence, I am satisfied that the ITO, on its face, contains reasonable grounds for believing that the necessary statutory pre-conditions were met in the circumstances. And that the grounds and evidence presented in the ITO were sufficient to reach the point at which credibly-based probability replaces suspicion; and that the judge could have properly granted the Tracking Warrant based on the evidence presented to her.

[40] I am fortified in reaching this conclusion by:

1. The diminished burden of proof: "credibly-based probability", which is less than the civil burden (balance of probabilities); and

2. The degree of deference shown to a presumptive valid warrant. The ITO contained, in my view, sufficient grounds and evidence that the judge could have properly issued the Tracking Warrant. I am not prepared (and the law prohibits) replacing her decision with my own preferred result;
3. The evidence of corroboration was decidedly scant. However, in my view and based upon my overall assessment of the evidence, any such weaknesses were ultimately offset by the overall strength in the compelling nature of the evidence and the credibility of the sources. In this case, corroboration by itself was neither determinative nor crucial. The identified weaknesses do not overwhelm the strengths or demonstrate a breach of section 8 of the *Charter*.

[41] The defence motion is dismissed.

Keith, J.