

[NOTE: ALL IDENTITIES HAVE BEEN FICTIONALIZED]

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

Between:

HER MAJESTY THE QUEEN

Respondent

and

R.M.

Applicants

NOTICE OF APPLICATION OF R.M.

TAKE NOTICE that an application will be made on behalf of RM (“the applicant”) on 20 June 2016 at the hour of 9:30 o’clock in the forenoon at 222 Main Street, Vancouver, B.C. for the following orders:

1. Setting aside a search warrant issued on 10 April 2013 which authorized police to enter and search for evidence at suite 3203 (...) Seymour Street, a private residence in the city of Vancouver, B.C., (“the residence”) under the authority of section 111 of the *Controlled Drugs and Substances Act*, on the basis that the information to obtain (“ITO”) filed in support of the application for that warrant, as amplified by documents to be filed herein, failed to disclose reasonable and probable grounds to believe that the applicant was a resident at that address.

3. A declaration that the Applicant's right to be free from unreasonable search and seizure pursuant to s. 8 of the *Canadian Charter of Rights and Freedoms* was violated when the search warrant was executed at the residence on 11 April 2013; and

3. An order pursuant to section 24(2) of the *Charter*, excluding from evidence at his trial all of the real evidence seized by police when the search warrant was executed at the residence on 11 April 2013.

AND FURTHER TAKE NOTICE that at the commencement of the hearing into the lawfulness and admissibility of these intercepted private communications, the applicant may seek the following additional orders:

1. That leave be granted to cross examine Constable DG ("DG"), who swore the ITO in support of the application for a warrant to search at the residence;
2. Such further and other orders as this Honourable Court may deem just.

AND FURTHER TAKE NOTICE that the grounds for these application are as follows:

1. Constable DG swore an ITO dated 10 April 2013 in support of an application for a search warrant at a variety of locations, one of which was the private residence at (...) Seymour Street, Vancouver, B.C.
2. In the ITO, DG deposed that he had reasonable and probable grounds to believe that the applicant was living at the residence (paragraph 35.1, 114.5). Those grounds are summarized at paragraphs 66-67 and again at paragraphs 81-81.12.6 of the ITO.
3. DG also deposed that he had reasonable and probable grounds to believe that evidence relevant to an ongoing drug trafficking investigation would be found at the residence, a belief premised upon his view that the evidence supported grounds to believe that the applicant resided at that place (see ITO paragraphs 122-126).
4. The grounds listed in support of DG's belief that the applicant resided at the residence included information supplied by confidential informant "A", that RM resided at an apartment on Seymour Street, in between Smithe Street and Robson Street, and is next to a theatre (ITO paragraphs 42.16, 67.1, 81.12.1).

5. Source debriefing notes disclosed in this case show that informant A did not tell police that the applicant lived at a residence on Seymour Street. The informant is reported to have said only this:

- a. R has a private residence in downtown Vancouver (p. 24); and
- b. B/W Smithe and Robson next to theatre, R has apartment downtown...(p. 27)

6. The affiant also asserted that “a male with the name “Richard Mohamed” listed on the form “K” (described elsewhere in the ITO as a rental contract for the residence obtained from the property management company) has been observed on video surveillance and confirmed by CIS Surveillance to have used the fob associated to suite 3203 (paragraphs 67.3, 81.12.2).

7. The police investigated fob usage corresponding to surveillance at and inside the building at (...) Seymour on 18 March 2013 and determined from a review of records provided by on site management at the building that a fob associated to suite 3203 was used to access elevators from the underground garage, the elevator, and the 32nd floor (paragraphs 81.1 to 81.11, 121.5).

8. Video stills taken from CCTV cameras at the building were observed by police and disclosed by the Crown. They show the applicant and another male (not identified), but do not establish which of the males held and used the fob which was associated to suite 3203 (source documents, 2013-03-21, tab 4, pp. 148-153).

9. A police surveillance officer posted to the 32nd floor observed the door to suite 3203 closing and he heard male voices. Neither the applicant nor the other male observed on CCTV were seen entering or departing from that suite (paragraphs 67.4, 67.5, 79.23 and 81.7).

10. DG deposed that he conducted a PRIME inquiry of the applicant’s address history, which revealed that the applicant has an address listed at 3203-(...) Seymour Street, Vancouver (paragraph 66).

11. The PRIME report referred to in that paragraph has been disclosed. It shows several addresses under the heading “address history”; one of those is 3203-(...) Seymour Street, Vancouver. The date for that address is listed as “2012-May-08”. There is no source shown for this information. The document does not explain where this information comes from (source documents 2013-03-15, tab 1, page 289).

12. DG deposed that the parking stall associated to suite 3203 is number 165 on parking level 6, and that a surveillance unit observed a vehicle associated to

the applicant parked in that stall (see ITO paragraph 111.1). The assertion that stall 165 is associated to suite 3203 is a bare assertion, unsupported by evidence contained in the ITO (paragraphs 67.6, 81.12.6).

13. The form "K" for the residence was obtained from the property management office by police investigators on 21 March 2013. That document has been disclosed. There is nothing in the contents of the form "K" to show that parking stall 165 is associated to suite 3203 (source documents, 2013-03-21, tab 2, page 143).

AND FURTHER TAKE NOTICE that the Applicant intends to rely upon the following material:

1. The ITO of Constable DG, sworn 10 April 2013.
2. The CDSA search warrant for the residence issued on 10 April 2013;
3. ITO source documents and informant source debriefing notes which have been identified in this notice of application;
4. Such further and other materials as may be provided by counsel and this Honourable Court may permit.

Dated in the City of Vancouver, in the Province of British Columbia, on this 1st day of June, 2016.

Mark Jetté
Counsel for the Applicant RM

TO: Clerk of the Provincial Court of British Columbia
The Courts at 222 Main Street, Vancouver, B.C.

AND TO: Public Prosecution Service of Canada.
Attention: Ms. Maggie Loda and Ms. Sharon Steele, Crown Counsel,

This notice was prepared by Mark Jette, counsel for the Applicant, whose address for service is:
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