ONTARIO COURT OF JUSTICE

DATE: November 1, 2021

HER MAJESTY THE QUEEN

— AND —

TAFARI GERSON-FOSTER

Before Justice L. Botham
Ruling on *Charter* Challenge

Bari Crackower and Eli Lo Re ..... counsel for the Crown
Jordana H. Goldlist ..... counsel for the Accused

BOTHAM J.:

[1] The Applicant is charged with possession of fentanyl and cocaine for the purpose of trafficking and possession of a prohibited device (ammunition and a magazine) arising from the execution of a search warrant on August 12, 2020 at 903-741 Sheppard Avenue West and the storage unit.

[2] The Applicant has applied for an order excluding all evidence seized from 741 Sheppard Avenue West. It is submitted that portions of the Information to Obtain (ITO) should be edited to excise inaccurate information and other misleading information should be corrected. It is further submitted that the Applicant's s. 10(b) rights were breached at the time of his arrest and that any alleged utterances made by the Applicant should be excluded.

[3] The ITO prepared in this matter contained information provided by 3 confidential handlers. That information was heavily redacted to protect their identity. It was conceded by the Respondent that the ITO, as edited, did not provide sufficient grounds to support the issuance of a warrant to search. A summary of the edits was prepared and I was asked to review the unedited ITO, which I did. Initially I was satisfied that the summary provided a sufficient basis for the Applicant to challenge the adequacy of the warrant. However, having heard submissions from both parties with respect to the validity of the warrant, I was of the view that the edits relating to para 6(g) needed to be revisited. The issue was dealt with in camera and ultimately the Applicant was provided with a more fulsome, although still redacted summary. The Respondent is not relying on the remaining unredacted portion of 6(g).

[4] Leave was sought and granted to cross-examine the Affiant with respect to the his decision to apply for a tele warrant, his references to two sets of convictions in the Applicant's criminal record (specifically the youth convictions and the 2017 convictions), information known to him through the various occurrence reports that he referenced and the descriptions provided of the video surveillance from the hallways at 741 Sheppard Avenue West.

[5] As part of the Applicant's Application Record, I was provided with copies of occurrence reports from December 23, 2015 and April 29, 2019 as well as the notes of Officer Ebrahimi from July 31, August 2, and August 10, 2019. In addition, the Respondent filed the notes of Officers DaSilva, Ebrahimi and Oliver from August 12, 2019. The Applicant also filed a copy of the surveillance videos from 741 Sheppard Avenue West which had been provided by way of disclosure.

[6] On August 12, 2019, a warrant was issued to search unit 903 at 741 Sheppard Avenue West. The items sought were listed in Appendix A as firearms, ammunition, magazines, firearm parts and paraphernalia, firearm documents and other documents in relation to firearms, documents and items in relation to recent

ownership, occupation and association with both the search location and the property located within the search location and any electronic evidence related to the above categories.

[7] The ITO was sworn by Detective Constable Jimmy DaSilva Cristopoulo. Information was received from three confidential sources. The grounds to believe that the Applicant was in possession of a firearm at the time the ITO was prepared and that the items sought in the ITO would be found at the Sheppard Avenue address arise primarily from the information provided by CI #1 and the video footage from 741 Sheppard Avenue West.

[8] As a result of the Step 6 hearing, I have reviewed the unedited ITO. However, for purposes of my summary of the ITO in this ruling, unless I indicate otherwise, I am referencing information contained in the edited ITO and the judicial summary.

[9] The edited ITO states that the CS was familiar with firearms and drugs and was providing information which had been corroborated by police investigation. The CS had been proven reliable in the past. The issuing justice was aware of the CS' motivation to provide the information, the sources' personal background and the nature of the source's relationship with the target.

[10] In July 2019, the confidential source advised that a male known as Tafari had a black handgun and drove a silver 4 door car with the license plate CBWK706. A description of Tafari was given and he was described as a big guy in the neighbourhood who had been shot at in the past.

[11] He was said to have a new condo by Sheppard and Bathurst. The confidential source advised that Tafari .....grains....at his condo. The term grains was explained as meaning bullets. It was said that Tafari sells cocaine and other drugs in Toronto and out of town. The source advised that there have been a lot of shootings and guys in the area that have guns are carrying them for protection.

The source identified the Applicant as Tafari from a police photograph. In August 2019, the confidential source provided further information to police. The summary provided by Crown counsel indicates that the edited portion of that information related to firearms.

[12] The police were able to corroborate that the Applicant had been seen around the basketball court described by the source. He was observed driving a silver Sonata with the same plates, described by the source. He was followed to a new condominium building at 741 Sheppard Avenue West, which is in the area of Bathurst and Sheppard. That building has video surveillance which was viewed by Detective Constable Ebrahimi.

[13] The issuing justice was advised by the Affiant that video surveillance from July 31st to August 10th had been viewed by Detective Constable Ebrahimi and that the following observations had been made.

i. DC EBRAHIMI observed Tafari GERSON-FOSTER attending the unit of903-741 Sheppard Avenue West at different times during the day, using what appeared to be a key into the locking mechanism and opening the door to the unit.

ii. Tafari GERSON-FOSTER was also observed leaving the apartment and making the motions of locking the door using what appears to be a key into the locking mechanism.

iii. Tafari GERSON-FOSTER was also observed coming into the unit wearing a set of clothing and then leaving wearing different clothing.

iv. Tafari GERSON-FOSTER was observed to also have what appeared to be guests entering the unit.

v. Tafari GERSON-FOSTER was observed staying at the unit overnight on multiple occasions.

vi. Tafari GERSON-FOSTER was observed to be driving the Hyundai Sonata (CBWK706) and parking it in the underground.

vii. DC EBRAHIMI advised me that based on his observations, he concluded that Tafari GERSON- FOSTER appears to reside in the address and has keys to enter the building and unit.

viii. DC EBRAHIMI also advised that on July 31st at about 9:42 PM (video surveillance time stamp), Tafari GERSON-FOSTER is observed wearing a red t-shirt, red shorts, grey shoes and walk to the front door of903-741 Sheppard Avenue West and appeared to unlock and open the door to enter. He was with another male wearing black pants and a black shirt, who walked behind Tafari GERSON-FOSTER and followed him inside the unit after the door was opened.

[14] The Affiant consulted several police data bases with respect to the Applicant. His convictions from 2013 to 2017 were listed in the ITO. The Applicant has challenged the accuracy of some of those entries. The Respondent has largely conceded those inaccuracies.

[15] It is acknowledged that the findings of guilt from 2013 were *YCJA* charges, although that was not explicitly stated. The allegations relating to the 2012 offence which led to the 2013 *YCJA* findings of guilt are set out in para 8 of the ITO. Although it is clear that the Applicant was found guilty of use of an imitation firearm in the commission of an indictable offence, the ITO goes on to state that the Applicant has shown in the past that he uses weapons for crime and references the 2013 *YCJA* conviction describing it as an armed robbery while using a firearm. The Affiant acknowledged in cross-examination that he should have made it clear that the weapon used was an imitation firearm.

[16] It is acknowledged that the 2017 convictions for drug related offences referenced in the ITO had been appealed and acquittals entered by the time the ITO was drafted. The Respondent concedes that those entries should be excised, as should the reference to the facts underlying the 2015 charges which were the basis for the 2017 convictions.

[17] Para 2-c, states that the Applicant was the victim of a shooting in Barrie in 2016. That in fact was not correct and the Affiant agreed that he had misread the occurrence report. Rather the Applicant was present at an address with another male, who was shot. The Affiant also acknowledged that he failed to disclose in his recitation of the incident that the Applicant had been driving his friend to the hospital when he failed to stop for police and that he had been cooperative with the police. I agree that that paragraph should be amended to correct the Affiant's summary of that incident.

[18] The Affiant listed several addresses associated with the Applicant, none of which were the address listed in the search warrant. At the time of the drafting of the ITO, the Affiant believed that the Applicant had a bail condition requiring him to reside at 38 Pengarth Court but had not included that information in the ITO. The Affiant testified that that was an oversight.

[19] The ITO referenced two 2015 incidents between the Applicant and his family, neither of which resulted in criminal charges or involved firearms. It also referenced a 911 call on July 7, 2019, reporting a possible assault in unit 903-741 Sheppard Avenue West. The police attended and there was no response when they knocked. There is no suggestion that the Applicant was involved in any way with this incident. The Applicant submits that those references would not assist the issuing justice and should be excised. I agree that I can see little relevance to any of those entries. However, I think it highly unlikely that their inclusion would have swayed the decision of the issuing justice in anyway and am not satisfied that they should be excised, since the incidents referenced are accurately reported from the supporting materials.

[20] I am satisfied that the summary prepared by the Federal Crown provides an adequate basis, together with the edited ITO, to assess the sufficiency of the grounds to believe that the Applicant was in possession of a firearm and that evidence of that offence could be found at the residence in question.

[21] Having reviewed the unedited ITO, I am satisfied that the information provided by confidential source #1 with respect to the claim that the Applicant was in possession of a handgun proximate to the time that the warrant was sought was compelling, credible and corroborated. Source #2 also identified the Applicant as a fentanyl supplier who carried a gun on him or in his car for protection when he dealt drugs. Again, having reviewed the unedited ITO, I am satisfied that the information provided by source #2 meets the same test.

[22] The Applicant accepts that there was a basis for the issuing justice to find grounds to believe the Applicant was in possession of a firearm proximate to the issuance of the warrant. The thrust of this application is what the Applicant describes as a dearth of grounds to believe that the evidence sought by the police would be found at the Sheppard address.

[23] The Applicant submits that the description of the video footage from 741 Sheppard Avenue West as set out in the ITO does not accurately reflect the actual video footage.

[24] The July 31, 2019 video footage shows a black male, not the target, leaving unit 903 at about 17:03 (video surveillance time), locking the door and waiting for the elevator. He then returns to the unit and opens the door, again using a key. At 17:08 he leaves the unit, locks the door and enters the elevator. At 21:42, a male wearing red shorts and t-shirt, believed to be the Applicant, uses a key to enter unit 903. He is carrying something over his arm. He is accompanied by another male who is dressed in black and has a bag.

[25] The video footage continues into August 1, 2019. At 12:08 am, two males, one in black and the other wearing a green t-shirt, black shorts and red shoes leave the unit and enter the elevator. At 1:11am, a male wearing a grey track suit, exits the elevator and enters unit 903, using a key. Twenty minutes later, that male leaves the unit and enters the elevator. At 6:08am, a black male wearing a green

shirt and flip flops leaves the unit and enters the elevator. At 10:09am, a black male who does not resemble either the Applicant or his companion, leaves the unit and enters the elevator. He is wearing black Kappa pants and a black shirt. At 11:14am the male, believed by DC Ebrahimi to be the Applicant, leaves the unit and enters the elevator. He is now wearing a white tank top, shorts and flip flops. Shortly afterwards the male wearing black Kappa pants returns to unit 903, carrying food. At 11:17am, the male in the white tank top returns to the unit.

[26] The next time the Applicant is observed at the condominium is August 10th. The footage provided by way of disclosure shows him and another male leaving the apartment and entering the parking garage where their vehicle had been parked in visitor parking.

[27] The ITO states that the two males are followed by a surveillance team when they drove out of the garage. At some point the officers lost them. Although surveillance was maintained on both 741 Sheppard Avenue West and 38 Pengarth Court, the vehicle was not seen again.

[28] The Affiant has testified that he did not view the surveillance footage. He has testified that he spoke to DC Ebrahimi and recorded what he was told in the ITO. It did not appear from the Affiant's evidence that he asked the officer any clarifying questions or attempted to elicit any additional details beyond the officer's bare bone assertions which he has recorded in the ITO. For example, he did not clarify whether the target was observed to park in visitor parking or a spot associated with the unit although he conceded that evidence that the target was using a designated parking spot would have strengthened his grounds. Nor did he clarify on which days the target was seen to enter the unit or the basis upon which the officer determined that other persons entering the unit were visitors and not a tenant.

[29] No request was made by the Applicant to cross-examine DC Ebrahimi as a sub-affiant. No request was made by the Respondent to lead evidence from DC Ebrahimi to amplify the record. However, DC Ebrahimi's notes have been included by the Applicant and Respondent as part of the record at this application. According to his notes, he viewed the footage from July 31st and August 1st on August 2nd. He returned to the building on August 10th and reviewed video footage again. Nowhere in his notes does he record that the Applicant was observed to stay overnight at the unit on multiple occasions. It was surprising to me that he would have made such an observation and not included it in his notes, however the Affiant was clear in his evidence that the officer had provided him with that information.

[30] It is submitted by the Applicant that the erroneous observations relating to the video footage should be excised and the ITO corrected to reflect an accurate summary of the footage.

[31] The Respondent submits that I have no authority to do so. It is submitted that the focus of my inquiry is restricted to the reasonableness and honesty of the affiant's belief about the existence of the requisite grounds, and not on the ultimate accuracy of the information the affiant relies upon.

[32] I do not disagree that the reliability of the affiant's assertions are not tested against the ultimate truth of the facts stated but against the reasonableness of the affiant's belief that the facts were true at the time that the ITO was drafted. In this case the Applicant seeks to correct the record put forward in the ITO by reference to information that was in the possession of the police at the time it was drafted.

[33] Although an Affiant is entitled to rely on information provided by other officers without necessarily conducting his own investigation into the reliability of that information, in this case there was no inquiry by the Affiant at all with respect to the officer's actual observations of the video surveillance.

[34] The video footage played a significant role in establishing the grounds to believe that the Applicant was residing at unit 903. There was no other information connecting him to the unit. There was no evidence he owned the unit or rented it. No one from the building identified him as a tenant. There was no evidence any such inquiries had been made of the building administration. The Affiant testified that he understood the need to make full and frank disclosure of all relevant information when preparing an ITO but he appeared to have asked no questions at all to clarify or understand what DC Ebrahimi had observed on the video surveillance. It is hard to assess the reasonableness of the Affiant's belief that the information he included was accurate when he made no inquiry at all into the basis for many of DC Ebrahimi's conclusions.

[35] In reviewing the record placed before the issuing justice and assessing whether the conditions precedent to authorizing a warrant to search have been satisfied, I may be persuaded that parts of the original material should be excised or amplified.

[36] In the 2017 case of *Paryniuk*, Justice Watt at paras 45-47, writes:

> The assessment required by *Garofoli* is contextual. What is involved is an analysis to determine whether there remains sufficient reliable information upon which the search authority could be grounded. This approach appropriately balances the need for judicial finality and the need to protect systems of pre- authorization: *Araujo*, at para. 54. In this analysis, facts originally omitted are also considered: *Morelli*, at para. 60.
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> Essential features of the *Garofoli* application are excision and amplification. Erroneous information is excised from the ITO and disregarded in determining whether the essential evidentiary predicate remains: *Araujo*, at para. 58; *Campbell*, at para. 14; *Morelli*, at para. 41. But errors made in good faith may be corrected by amplification through the introduction of evidence that was available when the ITO was prepared: *Morelli,* at paras. 41-43.
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> A final point concerns the standard against which alleged errors or omissions in the ITO are tested. The affiant's assertions are tested against the affiant's reasonable belief at the time the ITO was

composed, not the ultimate truth of the facts stated: *World Bank Group v. Wallace*, 2016 SCC 15, [2016] 1 S.C.R. 207, at para. 122.

[37] Justice Hill in the case of *Lakan* considered the consequences of including inaccurate information in an ITO. In that case the Affiant had testified that he had been provided specific information from a surveillance officer who testified that those had not been his observations. Justice Hill found that while it was unclear whether there had been a miscommunication or misunderstanding between the two officers, the record should be corrected. He writes at para 95, "where there are circumstances of inaccuracy or innocent misrepresentation in an ITO, the balance achieved by excision of offending text is designed, not so much as a penalty of sorts but as a corrective measure".[1]

[38] I am persuaded that that is the correct procedure in this case.

[39] The Applicant has provided a helpful review of the surveillance video provided by way of disclosure. I have reviewed the footage myself several times and am satisfied that the summary is accurate. I agree with the Applicant that the footage from the surveillance video was not accurately reflected in the ITO.

[40] The issuing justice was told that the Applicant was observed to attend unit 903-741 Sheppard Avenue West at different times during the day and that he was seen to enter and then leave, wearing different clothing. The issuing justice was not told that those observations occurred during the evening of July 31st and into the morning of August 1st, essentially one discreet attendance at the unit.

[41] The issuing justice was told that the Applicant was observed to have what appeared to be visitors entering the unit. Again, the issuing justice was not told that these observations were limited to the evening of July 31st and August 1st. As well, the issuing justice was not told that two of the other men who attended the

[1] *R v Lakan* 2018 O.J. No 3216

apartment that evening used a key to enter the unit and that one of those men had attended prior to the Applicant's attendance at the unit.

[42] The issuing justice was told that the Applicant was observed staying at the unit overnight on multiple occasions. The footage provided by way of disclosure shows only that the Applicant was at the unit from the evening of July 31st into the morning of August 1st. The issuing justice was not told that he was not observed at the unit again until August 10th.

[43] The issuing justice was told that the Applicant had been seen to park his vehicle in the underground parking. The justice was not told that on both occasions that the vehicle was seen parked in the underground parking, it was in visitor parking.

[44] A judicially issued warrant is presumptively valid. The party seeking to challenge the warrant bears the onus of displacing that presumption. As a reviewing justice I must exclude erroneous information included in the original ITO and may consider amplification evidence, where appropriate. My role as a reviewing justice is limited. It is not my role to substitute my view for that of the issuing justice. Ultimately the issue is whether on the amplified or corrected record, there still exists a basis to believe that an offence has been committed and that evidence of that offence would be found at the location to be searched.[2]

[45] Evidence suggesting that the Applicant was residing at unit 903 was central to a finding that there were grounds to believe that he might store his firearm there. Although it may well be reasonable to assume that someone might leave their firearm at their home, it is much less likely that they would leave it in a place that they attend on an infrequent basis and where others also have the ability to access. If the Applicant can fairly be described as a visitor, it is less logical that he would leave his firearm at a residence.

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[2] *R v Sadicov* 2014 O.J. No 376, para 83-89

[46] Evidence that at least two other males were observed using a key to access that residence on July 31st and August 1st would be relevant to assessing the reasonableness of the belief that a firearm would be left there by the Applicant, given the apparent ease with which others could access the residence.

[47] The corrected record would reflect that the case specific grounds to believe that evidence establishing that the Applicant was in possession of a firearm would be found at this address were that he had been observed there on two occasions, 10 days apart, and that he apparently had a key for the unit. On the first occasion, he was observed to change his clothes during the evening, suggesting that he may have had clothing there. The redacted ITO also references that the "confidential source advised that Tafari .....grains....at his condo". As previously discussed, the Respondent is not seeking to rely on the edited portions of that sentence, so the context of the comment is not clear. As well, the probative value of such a statement only arises if it is reasonable to believe, as stated by the Affiant, that the Applicant is residing at the address under investigation. Since the real issue is whether it was reasonable to believe that evidence of the offence of possessing a firearm would be found at unit 903-741 Sheppard Avenue West, it seems to me that that information would have been of limited assistance to the issuing justice.

[48] I am satisfied that the information contained in the corrected ITO does not contain reasonable grounds to believe that the evidence sought would be at the address to be searched and that the Applicant's rights under Section 8 of the *Charter* have been breached.

[49] The Applicant further asserts that there has been a breach of his s. 10(b) rights to contact counsel. The evidence on this issue was presented by way of an agreed statement of fact.

[50] The Applicant was arrested for possession of a firearm on August 12, 2019 at 18:05. He was given his rights to counsel and he advised that he had a lawyer,

Andrew Stastny but he didn't have his contact information. He was cautioned not to say anything and was handed over to Officer DaSilva who remained with him in the parking garage until 18:45pm when he was re-arrested for possession of a schedule 1 substance for the purpose of trafficking. At 18:59, a request was made for transporting officers. At 19:12, the Applicant was placed in the back of police scout car and allowed to speak to counsel before being transported to the police station.

[51] Section 10(b) of the *Charter* provides that everyone has the right on arrest or detention "to retain and instruct counsel without delay and to be informed of that right" (emphasis added). Police are required to immediately provide the detainee with a reasonable opportunity to speak to counsel. Where there exist safety concerns or a risk that evidence may be destroyed, some delay in allowing access to counsel may be delayed. But where that occurs, the police are obligated to take reasonable steps to minimize that delay.[3]

[52] In this case, the officers apparently did not have a problem allowing the Applicant to access counsel from the back of a scout car. It is not clear why that couldn't have been done while he was detained from 18:05 and 18:59. Officer Dasilva's notes reference that he seized an I-phone from the Applicant after his arrest and that T1 kept with me in OLE 7I7. I don't know how to interpret those notes in any way but that there was a police car available during that time, in which the Applicant could have been allowed to contact counsel, just as he did at 19:12.

[53] I am satisfied that the delay in allowing the Applicant to contact counsel in the circumstances of this case did breach his 10(b) rights.

[54] The admissibility of the evidence seized in this matter is governed by the factors set out by the SCC in *R. v. Grant*. Specifically, the nature of the state conduct that led to the *Charter* offending conduct and the need for the courts to

[3] R v Griffiths 2021 ONCA 302, para 36-38

disassociate itself from it, the impact of that conduct on the Applicant's protected interests and the societal interest in having matters determined on their merits. The ultimate issue is whether, having considered those three factors, the long-term reputation of the criminal justice system would be better served through the admission or exclusion of the evidence.

[55] The police did apply for and obtain a warrant to search the address. That is a factor which supports the admission of the evidence in this case. However, the warrant was obtained by virtue of evidence that was inaccurate and misleading. Other aspects of the ITO were carelessly drafted. When I consider the police conduct, I am satisfied that this factor supports exclusion of the evidence seized as a result of the execution of the search warrant.

[56] An order was sought by the Applicant to exclude any utterances made upon arrest and to exclude any evidence seized. The agreed statement of fact did not set out such utterances or assert that evidence was seized. It was therefore not clear to me if the Respondent would be seeking to introduce evidence of either at the trial. However, police obligations with respect to the implementation of s. 10(b) rights are well established and should be understood by investigating officers. I am satisfied that the first factor under the Grant analysis would support an order of exclusion. It is also *Charter* non-compliant conduct which can be considered in assessing the seriousness of the state actions in this matter.

[57] In assessing the impact of the state offending conduct on the Applicant's protected interests I have considered the fact that a private residence was entered by the police. For residents and visitors there is an expectation of privacy in that premise and it is objectively reasonable to expect that the state will not interfere with that privacy.[4] I consider there to have been a significant impact on the Applicant's protected privacy interests as well as on his right to access legal counsel without delay. I am satisfied that this second factor also supports the

[4] *R v Le* 2019 SCC 34, para 135-136

exclusion of the evidence seized at the unit as well as any utterances made by the Applicant to officers, prior to consultation with counsel.

[58] The third line of inquiry, namely society's interest in having cases adjudicated on their merits favours the admission of the real evidence seized at the residence.

[59] Ultimately the issue is having considered all three lines of inquiry, whether the admission of this evidence would bring the administration of justice into disrepute. In *Le*, the majority at para 141 wrote:

> While the first two lines of inquiry typically work in tandem in the sense that both pull towards exclusion of the evidence, they need not pull with identical degrees of force in order to compel exclusion. More particularly, it is not necessary that *both* of these first two lines of inquiry support exclusion in order for a court to determine that admission would bring the administration of justice into disrepute. Of course, the more serious the infringing conduct and the greater the impact on the *Charter*-protected interests, the stronger the case for exclusion (*R. v. McGuffie*, 2016 ONCA 365, 131 O.R. (3d) 643, at para. 62). But it is also possible that serious *Charter*-infringing conduct, even when coupled with a weak impact on the *Charter*-protected interest, will *on its own* support a finding that admission of tainted evidence would bring the administration of justice into disrepute. It is the sum, and not the average, of those first two lines of inquiry that determines the pull towards exclusion.[5]

[60] I can see no other way to describe the careless drafting of the ITO in this matter than it demonstrated a consistent inattention to well established constitutional standards. The Affiant failed in his duty to provide full and frank disclosure of what had been observed on the video footage. Observations which would have lessened the inferences sought by the police were omitted, such as the fact that other individuals also had the ability to access the unit. The significant inaccuracies in the descriptions provided of the surveillance footage of unit 902 are troubling, most specifically that the Applicant had been observed staying at the

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[5] *R v Le, supra* para 141

unit overnight on multiple occasions. It is hard to characterize that as anything but deliberately misleading. The breach of the Applicant's s.10(b) rights upon arrest further aggravates the offending conduct of the police.

[61] Given the nature of the state conduct in this matter, coupled with the impact it had on the Applicant's privacy interests, I am persuaded that the admission of the evidence located through the execution of the warrant would have a long term, negative impact on the reputation of the administration of justice and it will be excluded, as would any utterances made by the Applicant to the police at the time of his arrest. To be clear, in my view this was not a close case and even if I had not found a breach of the Applicant's 10(b) rights, I would have excluded the evidence seized pursuant to the warrant.

Released: November 1, 2021

Signed: Justice L. Botham