IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Freda M. Steel
Mr. Justice Christopher J. Mainella
Madam Justice Janice L. leMaistre

B E T W E E N :

HER MAJESTY THE QUEEN	)	***K. E. Smith***
	)	*for the Appellant*
Respondent	)	
	)	***A. M. Parashin***
- and -	)	*for the Respondent*
	)	
DANIEL JOHN KUPCHIK	)	*Appeal heard and*
	)	*Decision pronounced:*
(Accused) Appellant	)	***February 25, 2020***

MAINELLA JA (for the Court):

[1] The accused appeals his conviction for possession of 81.75 pounds of cannabis (marihuana) for the purpose of trafficking. The drugs and related trafficking paraphernalia were found in his residence located near Petersfield, Manitoba during the execution of a search warrant.

[2] The issue on appeal is whether the trial judge erred in concluding that the authorising justice could have found reasonable grounds (i.e., credibly-based probability) to issue the search warrant based on the totality of the circumstances in the information to obtain a search warrant (the ITO), as redacted (see *R v Garofoli*, [1990] 2 SCR 1421 at 1452; and *R v Pilbeam*, 2018 MBCA 128 at paras 6-8).

[3] The ITO was based on information provided by a confidential informant (the CI). In reaching his decision, the trial judge assessed the CI's information based on the "three-C's" test discussed in *R v Debot*, [1989] 2 SCR 1140 at 1168 (i.e., to what extent is the information compelling, credible and corroborated) (see also *Garofoli* at p 1457; and *Pilbeam* at para 14).

[4] The accused argues that the information in the ITO was insufficient to establish reasonable grounds to believe that an offence had been committed and that evidence of that offence would be found at the specified time and place because the CI's information was not compelling, the CI was unproven and had an unknown motive, and the police investigation did not confirm details of the criminal activity the CI said was occurring.

[5] While the function a judge performs when conducting a *Garofoli* review is important, the nature of the review is limited and starts from the presumption that the search warrant was valid (see *Pilbeam* at paras 6-8). We are satisfied that the trial judge selected and applied the correct standard on the *Garofoli* review and see no reason not to defer to his conclusion that, when the ITO is read in its entire context, there was a reasonable basis on which the authorising justice could have issued the search warrant (see *Pilbeam* at para 9).

[6] In particular, it was open to the trial judge to find the CI's information compelling, as it was, for the most part, recent (six days old) and based on first-hand observations of criminality made inside the accused's residence. Important to the significance of the CI's observations of "pounds of marihuana" being in the accused's residence is the further fact in the ITO that the CI had personal knowledge that the accused was a well-established

marihuana dealer regularly trafficking at the pound level (see *R v James*, 2019 ONCA 288 at para 55, rev'd 2019 SCC 52). In addition, there were no obvious concerns with the CI's credibility except that his or her genuine knowledge about the local drug trade had not yet led to any specific arrest or seizures as the CI was new. Finally, a number of pieces of information provided by the CI about the accused's lifestyle and history, including some facts not well known, were confirmed by police investigation prior to the application for the search warrant.

[7] In the result, the appeal is dismissed.

Mainella JA

Steel JA

leMaistre JA