

Court of Queen's Bench of Alberta

Citation: R v Zyp, 2020 ABQB 491

Date: 20200826
Docket: 180592727Q1
Registry: Edmonton

Between:

Her Majesty the Queen

Crown

- and -

Vincent Zyp

Accused

**Judgment
of the
Honourable Mr. Justice M. J. Lema**

A. Introduction

[1] This is an entrapment case. After pleading guilty to drug-trafficking offences, Vincent Zyp applied for an entrapment-based stay of proceedings. He argued that the police offered him an opportunity to commit a crime before they, or any of them, had a reasonable suspicion he was already trafficking.

[2] In September 2019 RCMP officers in St. Albert received information from a confidential informant (CI) that an individual named Wally at a certain cellphone number was selling cocaine and “K” (ketamine) in the Edmonton area. The same informant also offered information on two other individuals selling illegal drugs in the same area.

[3] After exploring the informant's background and confirming some of the information about the two other individuals, the RCMP officers were satisfied that the Wally information was reliable. They passed along the information to Edmonton Police Service officers and arranged with them for an undercover (UC) EPS officer to contact Wally to try to arrange a purchase of cocaine.

[4] The UC officer did that, obtained the cocaine as arranged, and purchased other illegal drugs from him. Eventually a search warrant was obtained for his home, with a search revealing a large inventory of illegal drugs, drug-trafficking equipment, and cash. "Wally" turned out to be Mr. Zyp, who was charged with various trafficking offences.

[5] The Crown argued that, via the CI's information and various due-diligence efforts, the CI-contacting officers developed a reasonable suspicion that Wally was indeed already trafficking. Alternatively, it argued that the UC officer developed such a suspicion on her own and did so before offering him an opportunity to commit an offence.

[6] I find that the CI-contact officers did not acquire a reasonable suspicion, despite the initial tip and the associated due diligence.

[7] However, armed with the tip and via her opening dialogue with Wally, the UC officer developed the requisite suspicion and did so before offering him an opportunity to commit an offence.

[8] Accordingly, the entrapment application fails.

B. Issues

[9] The issues are:

1. whether the CI information gave the police reasonable suspicion that Wally was involved in illegal drug activities. That, in turn, requires an exploration of:
 - a. how **compelling** the tip was, including the significance of not knowing whether it was first-hand information;
 - b. how **credible** it was, including the significance of the CI being a first-time informant, the informant's motive to provide information, and the police not spelling out to the informant the need for accurate information and the potential criminal consequences of providing false information; and
 - c. whether the tip was **corroborated**, including the spillover effect, if any, on the Wally tip, of the police confirming aspects of the two other tips;
2. if the CI-contacting officers had the requisite suspicion, whether they had to relay the grounds to the downstream officers or at least the UC officer; and
3. if the contact officers did not have a reasonable suspicion or if the "suspicion baton" was dropped before it reached the UC officer (if it indeed had to be passed), whether the UC officer developed a reasonable suspicion on her own and did so before offering Wally an opportunity to commit an offence.

C. Analysis

Upstream reasonable suspicion

[10] I start by reviewing whether, via the initial tip and their associated due diligence, the RCMP officers acquired a reasonable suspicion that Wally or whoever was associated with the tipped cell number was already engaged in trafficking i.e. before they put the undercover operation into gear and, by definition, before an “opportunity to commit” was offered to him.

Reasonable suspicion generally

[11] In *R v Mack*¹, the Supreme Court of Canada set the “reasonable suspicion” threshold for entrapment:

To summarize then, **the police must not**, and it is entrapment to do so, **offer people opportunities to commit crime unless they have a reasonable suspicion that such people are already engaged in criminal activity** or, unless such an offer is made in the course of a bona fide investigation. ... [emphasis added]

[12] It reiterated that requirement in *R v Ahmad*²:

We say our jurisprudence affirms that police cannot offer a person who answers a cell phone the **opportunity to commit an offence without having formed reasonable suspicion that the person** using that phone, or that phone number, **is engaged in criminal activity**. [emphasis added]

Characteristics of reasonable suspicion

[13] In *R v Chehil*³, the Supreme Court held that reasonable suspicion:

- must be based on objectively discernible facts;
- means something more than a mere suspicion and something less than a belief based upon reasonable and probable grounds;
- must be assessed against the totality of the circumstances;
- must be the subject of a fact-based, flexible inquiry and grounded in common sense and practical, everyday experience;
- is more than merely a “generalized” suspicion (because [that] “would include such a number of presumably innocent persons as to approach a subjectively administered, random basis” for a search);
- is designed to avoid indiscriminate and discriminatory searches;

¹ [1988] 2 SCR 903 at para 118

² 2020 SCC 11 at para 4. The Court also confirmed that “reasonable and probable grounds” cases can be helpful “in screening [CI information] for objective [reliability] markers” in a “reasonable suspicion” setting: footnote 1 in *Ahmad*.

³ 2013 SCC 49 at paras 26-27, 29-30, and 32-35

- need not be the only inference that can be drawn from a particular constellation of factors ... factors that give rise to a reasonable suspicion may also support completely innocent explanations; and
- does not require evidence of unlawful behaviour or of a specific known criminal act.

[14] In *R v MacKenzie*⁴, the Court added that:

- officer training and experience can play an important role in assessing whether the reasonable suspicion standard has been met;
- in gauging reasonable suspicion, the analysis of objective reasonableness should be conducted through the lens of a reasonable person “standing in the shoes of the police officer”; and
- the police must be allowed to carry out their duties without undue skepticism or the requirement that their every move be placed under a scanning electron microscope.

Confidential-informant information as basis of reasonable suspicion

[15] In *R v Debot*⁵, the Supreme Court outlined the following test for gauging CI information:

...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? I do not suggest that each of these factors forms a separate test. Rather, I concur with Martin J.A.'s view that 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. [emphasis added]

[16] In *R v Ahmad* (cited above), the Supreme Court reiterated this approach (at para 53) and illustrated how those criteria might be satisfied (at para 51):

Police practice *itself* shows that, whether the police are investigating an individual or a phone number, various steps can be taken upon receiving a tip associating a phone number with dial-a-dope activity *before* acting on it by calling the number. Police may wait to see if more tips are received about the same person or phone number. Police may cross-reference the person's name or phone number to find other connections between it and criminal activity. Police may also consider any details contained in the tip or, if known, the reliability of the informant. For example, does the source have a criminal record? How long have the police used the source? Has the source provided credible tips in the past? Is there a possible motivation for giving a false tip ...? Is the source's information first-hand? ... As

⁴ 2013 SCC 50 at paras 62, 63 and 65

⁵ [1989] 2 SCR 1140 at 1168

in *Mack*, whether a tip can generate reasonable suspicion will also be connected to the currency of the information [citations omitted]

[17] In *R v Caissey*⁶, the Alberta Court of Appeal identified a number of informant-reliability factors:

The trial judge committed no error. With reference to the three factors set out in *Debot*, the information provided by the informant was **detailed and compelling**, and was based on his/her **personal knowledge** that had been **recently obtained** while in the appellant's apartment. Although the informant had not previously provided confidential information to the police, he/she was **known to the police officer**, and the **police independently confirmed a number of details**, including the identity of the appellant and his residential address, that no children lived in the home, the name of his roommate, and the description of his vehicle. ... [emphasis added]

[18] In *R v Ndahirwa*⁷, the Court of Appeal upheld the trial judge's finding of "compelling, credible, and corroborated" CI information, anchored (in part) on "information [that] was **sufficiently detailed to make it compelling**" and "the police [having] **worked with this informant on a number of occasions**, and he [having] previously **provided credible information**." [emphasis added]

[19] In *R v Rocha*⁸, the Ontario Court of Appeal outlined similar markers of "compelling, credible, and corroborated" information:

The tip was compelling. It was **detailed and current**. It was **not limited to conclusory allegations** of criminal conduct. It was sourced to the informant's "**direct**" **observations and personal knowledge**. The source had a **first-hand basis** for the information and gave **detailed information** about the drug activity. It was not based on rumour or gossip. The appellant has not demonstrated that there was no basis upon which the tip could be relied upon as compelling.

The source was credible. The informer was **known to police**, immersed in the criminal sub-culture, and **privy to details not normally known to the public**. He had **provided valuable information to the police before**. He was **aware that he might face criminal prosecution by giving false information**.

The information was corroborated. **Numerous material aspects of the tip were confirmed by police, including the appellant's connection to the bar and 64 Crawford Street and activity at the bar suggestive of drug trafficking**.

"Compelling" – significance of first-hand (versus other) information

[20] One facet of "compelling CI information" is whether it is first-hand, as explored in these case excerpts:

- In terms of how **compelling** was the CI's tip, I see no basis to interfere with the trial judge's finding that this was not a case where "rumor or gossip from the street [was]

⁶ 2007 ABCA 380 at paras 22-25 *aff'd* 2008 SCC 65

⁷ 2018 ABCA 359 at paras 1 and 3-6

⁸ 2018 ONCA 84 at paras 23-25

being passed on to the police.” The information could be considered *compelling because it was first-hand, recent and had a degree of detail: R v Pilbeam*⁹;

- [The trial judge properly] concluded that there was an objective basis to the arrest because the information was **“quite compelling” as it was detailed, recent and firsthand**; the CI had “proven to be reliable”; and the information was corroborated by observations of three interactions “consistent with the sale of drugs”: *R v Penner*¹⁰;
- The problem [with the CI information] is then exacerbated by some significant shortcomings in the information contained in the ITO. At no point did the affiant specify when he received the information from the informant. The affiant did not specify the timeframe within which the information was applicable. **There was also no indication as to whether the informant knows the information first hand, second hand, third hand, or through the rumour mill: R v Chau**¹¹;
- The first question [“compelling” information”] addresses the **quality of the CI’s information. For example, did he purport to have first-hand knowledge of events or was he reporting what he had been told by others? -- R v Shivrattan**¹²;
- In this instance the source of the tip to the police was a known informant, someone who had provided accurate information on a number of occasions in the past, and there was no inducement or quid pro quo for the information. **There is no evidence of the source of the informant’s knowledge**, nor any indication as to whether the informant has a criminal record.
On balance, I am satisfied that the tip was credible, principally because it came from a known source with a proven track record. [emphasis added]: *R v Cave*¹³;
- Brown testified that the Informant had provided information on previous occasions which proved to be reliable. In fact, on some prior occasions, Brown had paid the Informant for information. The information previously provided resulted in arrests and convictions. The Informant had no criminal record for crimes of dishonesty. **However, Brown was unable to say whether or not the information provided by the Informant was first-hand and based on his knowledge or from some other source. While Brown also could not say whether information previously provided by the Informant was first-hand or otherwise, the absence of that evidence tends to diminish the credibility of the source.** [emphasis added]: *R v Vandepoele*¹⁴;

⁹ 2018 MBCA 128 at para 16

¹⁰ 2019 MBCA 8 at para 5

¹¹ 2019 BCPC 200 (Tam PCJ) at para 19

¹² 2017 ONCA 23 at para 27

¹³ 2019 ONSC 6994 (Boswell J.) at paras 60 and 61

¹⁴ 2005 MBQB 76 (Bryk J.) at para 27

- 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**. ...: *R v Kupchik*¹⁵; and
- The trial judge found the confidential informant information to **not be compelling. I disagree. The information was fairly detailed and specific**. It described various personal characteristics of the respondent, the types of drugs being trafficked, where the transactions occurred, and how they were carried out. All the informants identified the respondent's Alfonso Crescent residence as the hub. Two of the confidential informants identified the precise address.

C.I. 1 was said to know the respondent personally, though no details were provided. C.I. 2 and C.I. 3 were described as customers of the respondent. **They had first-hand knowledge of the trafficking. This relationship helps to alleviate the concern that they were just perpetuating rumours or gossip.** [emphasis added] *R v Dhillon*.¹⁶

Significance of "first-time informant"

[21] On the "credibility" factor, here is additional guidance on evaluating information provided by first-time confidential informants:

- [The informer's first-time status] may mean that the credibility factor is weaker than if [the informer] had previously provided information that grounded a judicial authorization or arrest. [However] ... **the provision of prior information leading to judicial authorizations is [not] the foundation for credibility. ... every confidential informer needs to have a "first time" in providing information and so it only makes sense that this cannot be the only factor in determining credibility or reliability: *R v Nguyen***¹⁷;
- **First-time informants present the inevitable conundrum of no prior instances against which their credibility can be assessed.** This may amount to cold comfort relative to credibility from the perspective of defence counsel, but certainly **every informant at some time disclosed confidential information to police authorities for the very first time.**

... this was not a case of an anonymous source, but rather an instance where the information was provided directly to the police. **The officer had a conversation with the CI, directly and in person. That would have provided the officer with at least some opportunity to make an initial and surface level assessment of him/her and what he thought relative to the credibility and reliability of the information that was being provided.**

¹⁵ 2020 MBCA 26 at para 6

¹⁶ 2016 ONCA 308 at paras 34 and 35

¹⁷ 2014 ABQB 766 (Thomas J.) at para 48

Nevertheless, the case law reminds us that **weakness with respect to credibility can be countered by the strength of the compelling nature of the confidential information, and its corroboration...**: *R v Rugigana*¹⁸ [this and above two paragraphs];

- [concerning whether a source was credible]: Although the affiant states in the ITO that he confirmed that the CI did not have a criminal record, or any outstanding charges, and that the informant had never provided information to police, **there is no information on which to assess the credibility or reliability of this source. The informant has no track record: *R v Persad***¹⁹;
- Most commonly, the frailty in the informer information stems from the fact that the informer had **no track record of providing reliable information in the past**, the affiant's failure to disclose the informant's source of knowledge, and the lack of detail in the information. This is not unusual in wiretap affidavits, particularly having regard to the duty placed on the affiant to make full and frank disclosure. **These frailties undoubtedly affect the weight that can be placed on the individual pieces of information. But none of these frailties necessarily result in the information having no value.** The same is true for the unsourced information from individuals who are not confidential informants: *R v Riley*²⁰;
- One can readily imagine a situation where an informant comes forward with information for the first time. **If the information was otherwise detailed and precise, surely the information would not be treated as unreliable simply because the informant has not previously provided information: *R v Joe***²¹; and
- ... **detracting from this informant's reliability** is the fact that this is the **first time information has been provided**. He or she is therefore **untested: *R v Jones***.²²

CI's motivation to provide information

[22] Another credibility factor is the CI's motivation to provide the tip. Some guidance on that aspect is excerpted here:

- The **motivations of confidential informers are always a relevant consideration when assessing their reliability and credibility**. Confidential informers can be motivated by any number of things; some for money, some to settle a score, some to glean favour with the police, and indeed some to perform their civic duty (that last club might not be a crowded one). On the facts here, I am satisfied that the issuing justice had enough information to assess the credibility and reliability of the confidential informants. The ITO makes clear which of the group were paid. In my

¹⁸ 2015 ONSC 2233 (Quigley J.) at paras 61, 63 and 64

¹⁹ 2012 ONSC 3390 (Daley J.) at para 88

²⁰ 2009 CanLII 7177 (ONSC) (Dambrot J.) at para 121

²¹ 2015 NWTSC 23 (Shaner J.) at para 45

²² 2012 ONCJ 880 (Loignon J.) at para 70

view, **the amounts they were paid is irrelevant as what anyone will do for money is so subjective as to render objective review impossible. ...: *R v Windebank*²³;**

- **[whether [a CI] has a compensation history and has been compensated frequently for information] is relevant to the accused to test the credibility and the reliability of [the CI], for example by providing a monetary motive for the informer to identify the accused, even without complete or accurate information as to the person, place, timing, drug offences or *Criminal Code* offences to be suspected. On the other hand, any detail with respect to compensation history might very well tend to provide information which may identify the informer, in the context of all of the available information: *R v Chui*²⁴;**
- In addition, the informer's motivation appeared to be **altruistic as he/she was not seeking money or benefits from the RCMP but was simply "concerned for the good of the community". ... the effect of this additional information was to strengthen the reliability of the tip.** Not only was the tip reasonably detailed and reasonably corroborated, as the June 7 Investigation Report made clear, but **it was also provided by an informant who was well-motivated ...: *R v Jaser*²⁵;**
- ... most of the informants were said to have been **motivated by the prospect of monetary compensation.** While on one hand this **may suggest a motive to be untruthful,** on the other hand, as Mr. Gibson submits, it **may suggest an incentive over the long term to provide truthful information** that will promote the continuation of the relationship with the police: ***R v Curry*²⁶;**
- While there is **no suggestion** in the ITO that the confidential informant was **ever warned or cautioned about potential penalties for giving the police false information,** and it is clear that the confidential informant was **"motivated by financial compensation"** in providing information to the police about the alleged criminal activities of the accused, the ITO establishes that the confidential informant has at least a short history of providing accurate and reliable information to the police about the criminal activities of others ...: ***R v McKenzie*²⁷;**
- ... the confidential source candidly acknowledged that his **"motivation for providing this information" to the police was "strictly for monetary compensation."** The confidential source was told, however, that providing this information to the police would **benefit him only if it was "completely accurate and true."** In other words, the confidential source was told, in clear terms, that **the police "only provide monetary compensation" if the information provided is proven to be "reliable and accurate" and results in "the arrest of the male in possession of the**

²³ 2014 ONSC 6258 (K. Phillips J.) at para 32

²⁴ 2018 ABQB 899 (Feehan J., as he then was) at para 31

²⁵ 2014 ONSC 6052 (Code J.) at paras 57-58

²⁶ 2015 BCSC 611 (Holmes J.) at para 41

²⁷ 2016 ONSC 245 (Campbell J.) at para 54

firearm.” With this understanding, the confidential source “agreed to provide truthful information.” Accordingly, the confidential informant knew full well that the financial benefits that were motivating him to provide the information to the police **would not be forthcoming if the information he provided was false or inaccurate: *R v Boussoulas***²⁸;

- In this case, the ITO disclosed the CI’s **motivation for providing information to the police and what would happen if the information turned out to be false or misleading.** This information is relevant to the CI’s credibility: *R v Simpson*²⁹;
- ... [The police officer] acknowledged that the informant’s motivation in coming forward was **monetary reward and or consideration regarding pending charges. The informant was told that if this information was incorrect or inaccurate, he or she would not be used as an informant again: *R v Williams***³⁰;
- It is clear from the information provided that the confidential informant may well have been **financially motivated** to provide the information in question. This is **not an unusual situation.** Financial gain can motivate people to lie, just as it can motivate them to tell the truth. There is nothing before the Court to support an inference that Cst. Toma knew or should have known that the information received from the informant was false, inaccurate or misleading because of the prospect of financial compensation, nor that he omitted to include any information he had received which was required in order to make full, fair and frank disclosure: *R v Lam*³¹;
- ... the case law recognizes that the **absence of financial remuneration is a relevant factor** for the court to consider with respect to the assessment of a source’s **credibility:** ... *R. v. Debot* (SCC) at para 59. **The converse is equally true.** Logic and human experience teach us that **the existence of a financial motive may affect a person’s credibility.** When dealing with statements made by confidential informants, **the fact that such individuals were remunerated might have a bearing on whether the affiant knew or ought to have known that the individual was conveying false information.** If significant sums of money are being expended on an informant in order to gain information, then common sense tells us that an informant might have a motive to lie in order to continue receiving such sums of money. This incentive makes the **details of remuneration and reimbursements** made to source 2 **relevant** to the CSIS affiant’s stated belief that source 2 is a **reliable source: *R v Alizadeh***³²; and
- ... Although informer A was **paid for the information, he knew he would be paid nothing if the information he provided was not truthful and reliable. This provided a motive for informer A to be truthful in order to be paid in the**

²⁸ 2014 ONSC 5542 (Campbell J.) at para 27

²⁹ 2020 ONCJ 40 (North J.) at para 49

³⁰ 2014 ONCJ 7060 (Humphrey J.) at para 13

³¹ 2016 ABQB 304 (Pentelechuk J., as she then was) at para 50

³² 2014 ONSC 206 (McKinnon J.) at para 7

present, and to be used again in the future. This incentive and informer A's past conduct in providing information leading to the seizure of drugs and crime provide a degree of reliability: *R v Hoelscher*.³³

[23] Against that backdrop of reasonable-suspicion and confidential-informant law, I now gauge the existence of reasonable suspicion anchored in the CI information

Existence of upstream reasonable suspicion

Facts bearing on upstream reasonable suspicion

[24] The entrapment hearing began with testimony from the four police officers centrally involved in the undercover operation. I reproduce here the key testimony of the first two officers, who met the CI and performed, or reviewed, due-diligence work about the CI after that meeting.

RCMP Corporal Kirk Smith -- confidential-informant handler

[25] Corporal Smith, who was assigned to the RCMP's St. Albert detachment, testified that:

1. on or about September 12, 2017, he met in person, for the first time, a confidential informant who "gave me information on three persons selling drugs";
2. he knew the true identity of the CI;
3. this was the first "[tip] information" he had received from this CI;
4. before meeting with the CI, Cpl. Smith's contact with the CI had been limited to "approximately three [phone] calls", which he testified (on cross-examination) occurred no more than two weeks before the meeting;
5. as well before the meeting, he performed the following background checks on the CI:
 - a. PROSE (the RCMP's internal database), which is "member-populated" and contains names, dates of birth, and driver's license numbers of persons encountered by police in the context of complaint files opened by the RCMP. It captures what members write about their dealings with investigated persons and also information logged in calls to police dispatch. It is the "recorded electronic filing system" for the RCMP;
 - b. E-PROSE (the Edmonton Police Service's equivalent internal database); and
 - c. CPIC ("Canadian Police Information Computer"), which captures "criminal information" throughout Canada e.g. criminal records, current probation orders, and similar information;
6. asked in direct examination whether "in the course of those checks, [you saw] anything to cause concern about [any] history the [CI] may or may not have respecting honesty or truthfulness", Cpl. Smith replied that he "found nothing in those checks leading me to disbelieve the person ... nothing that caused me any concern";

³³ 2016 ABQB 44 (Simpson J.) at para 44

7. the information (in part) was that:
 - a. a male person named Wally was selling drugs [in Edmonton and area];
 - b. Wally used a certain phone number [provided by Cpl. Smith but not reproduced here] for the sale of drugs; and
 - c. he was selling “coke and K” [i.e. ketamine];
8. the CI provided other Wally-related information that Cpl. Smith was not comfortable revealing, as it might “reveal the [CI’s] identity”;
9. [here is a synopsis of the “financial aspect” evidence]:

Crown (Cr): Was the confidential informant paid for the information provided concerning Wally?

Smith: (S): Yes, that’s correct.

Cr: And did that occur at the time they provided information or some other time?

S: That was another time.

Cr: Sometime afterwards?

S: Yes, that’s correct.

Cr: And why were they ... or what criteria were employed in determining whether they should be paid for the information?

S: As a matter of the way we do business, you get paid for results. If the information shows to be true, for example, if a drug dealer shows up to sell narcotics to an undercover operator, search warrant is executed, drugs are seized, cash is seized, charges are brought forward, those are all things we look at to warrant a payment. It is kind of ...it would be a motivating factor to these people to provide us with factual information, to be paid after things have panned out and shown to be true.

Cr: So, if the information does not pan out, so to speak, or result in a successful outcome, is the confidential informant ever paid?

S: I have never paid a confidential informant for information that has not panned out.

[On cross-examination, Cpl. Smith testified:]

Defence (Df): Did the confidential informant know they would be paid for a tip that panned out ... I guess I should rephrase that. Did you tell the confidential informant they could be paid for a tip that panned out?

S: I would normally explain to them that there [are] a variety of ways ... some people just want their communities to be a better place ... some people request financial award things of that nature ... you know ... so, I would explain a variety of options.

Df: So, you have kind of a spiel about how it goes ...

S: That's correct.

Df: ... okay.

S: One of the questions on HSU form is what their motivation is, and for this particular confidential informant, financial motive was their motivator.

[Later in cross]

Df: Ms. Laurie may have asked this question ... was the CI paid specifically for this tip?

S: Yes.

10. as "vetted" post-meeting via the RCMP "K" Division Human Source Unit, a "warehouse" for the Division's CI information, this was the CI's first involvement as a police informant;
11. as Cpl. Smith understood it, that Unit "checks with other [RCMP Human Source] units and municipal partners", to see if a given person has been a CI before", with the focus being on whether there are "issues of treacherous or untruthful information" having been provided;
12. following a "no concerns" report about this CI, Cpl. Smith received approval from K Division's HSU to use this CI;
13. per other checks done, the CI did not have a criminal record;
14. the information obtained from the CI about Wally was not acted upon by the RCMP until after the "K" Division HSU had given its approval to use this CI;
15. Cpl. Smith's "personal assessment" of the CI's "credibility, or reliability, or truthfulness" was that "I had no reason to disbelieve what the person told me ... I believed their information was credible." Asked in direct if he had "occasions to discover that the CI was not telling the truth during his dealings with the CI", he responded: "No, that did not occur." Asked if he had any concerns with the reliability of the CI's information, he said: "Because this was the first time I spoke to this CI, and given the stakes involved, I do try to look at the information a bit more closely ... it is different if you work with someone over years who has proven to be straightforward and factual ... because this was the first time, I tried to be skeptical, [but] I found no reason to disbelieve [this CI's information]";
16. asked if he took "any steps to verify any of the information provided by the [CI]", he replied: "Yes ... I came back to the office and ran the information that was provided on EPROSE and PROSE ... I ran them on open source to see what might come up. Through open-source inquiries (for example, Google), I was unable to find any information to corroborate what was provided on Wally ... searching the name 'Wally' in a Canada-wide database [yielded] several people with that name ... [I could not] determine who Wally was. [As for the phone number that had been

provided], [it] was run, [but] I could not tell who it belonged to, per those databases. [However], two other people were informed on ... first, [another] male [person]... I was able to confirm his name and [connect] the [provided] phone number [to him], as well as confirm a drug history for that person, via PROSE and EPROSE, and [also able] to confirm [the] community where he lived, plus the car he drove ... there was quite a bit of information on that male that I could corroborate”;

17. as for the third male person, “[I was able to] locate his full name and link it to the [provided] phone number, plus the location where he lived”;
18. Cpl. Smith performed the checks of those two other persons at or close to the time he performed the checks on Wally;
19. the results of the checks into those two other individuals “affected [his] assessment of the information about Wally” in the sense that “it gave me confidence in the information provided ... I found lots of links with two-thirds of the group of people [the CI] was talking about. In that, it did provide me with greater confidence in the information provided”;
20. that “confidence” related to the information being “truthful ... based on being able to corroborate a great deal of the information [about] the two others”;
21. having arrived that stage of his exploration into the information provided by the CI, Cpl. Smith prepared reports for his supervising officer (Sgt. Robby Butts) recommending the use of the CI’s information in an undercover police operation, which included the creation of target sheets based on that information i.e. reflecting that “a male named Wally is selling ... coke and K” via [a particular phone number]”; and
22. target sheets are prepared for the use of an “undercover street team.”

[26] The target sheet here was entered as an exhibit at the application. It is a fill-in-the-blank form, to which the following key information was added:

- a. Given Name 1: “Wally”
- b. Street name / Alias: “EDMONTON GUY”
- c. Additional Information: “Wally” sells coke and “K” ... He sells his product for \$110 a gram and usually chooses to have the [customer] meet him, but he will come to the [customer’s] car.”
- d. ... Subject Phone number: [number provided]; and
- e. RANDOM VIRTUE TESTING / LEGAL RAMIFICATIONS – Provide additional comments / details, if required: “Proven Source Information – box checked;

[27] Returning to the synopsis of Cpl. Smith’s testimony:

23. Cpl. Smith explained the “Edmonton Guy” street name: “I broke down our targets from where they were coming from ... [Wally] was coming from Edmonton, based on what we were aware of”;
24. he understood “coke” to refer to “powder cocaine” or “soft”, and “K” to refer to ketamine;
25. asked on cross what “proven source information” meant to him, he said “information provided by the source that I can prove or independently verify on my own through indices checks.” Having acknowledged that checking the “Wally” and “phone number” information yielded “nothing”, he said that this box was checked because “taking a global view of the information, ... [there was] a lot of substance to what I was given [by this CI] that I could independently verify ... the information was good ... it was credible ... I was able to prove two-thirds of the pie ... which [spilled] over ... [it] led me to believe [there was] truthfulness here”;
26. he also testified on cross that, per his normal practice, he would have asked the CI for information about Wally’s race, age, address and vehicle and that, if he had received any such information, he would have added it to the target sheet details;
27. asked if he explored whether the CI’s information was first-hand or second-hand, he declined to answer, on the basis that it might “narrow the pool down” i.e. risk identifying the CI;
28. Cpl. Smith passed along the target sheet to Sgt. Butts at the same time he provided target sheets relating to the two other individuals noted above; and
29. the CI was paid after the investigation (discussed further below) had concluded with Mr. Zyp being charged with various drug offences.

RCMP Sgt. Robby Butz – CI handler’s supervisor

[28] Sgt. Butz, also based in St. Albert, received the target sheet from Cpl. Smith. He had also participated with Cpl. Smith in the September 12, 2017 meeting with the CI. He testified that the vetting steps taken by Cpl. Smith, as outlined above, conformed with his (Sgt. Butz’s) understanding of the standard RCMP drill for such vetting.

[29] He also testified that

1. the undercover-operator technique is the most effective way of investigating dial-a-dope drug trafficking;
2. surveillance is another technique, but it requires a “starting point” -- e.g. where the suspected trafficker lives or sells, or where they work, or work out – and it usually limited to larger-scale projects, requiring “lots of resources and time” i.e. is not used for “lower-level trafficking”, such as dial-a-dope operations;
3. he was satisfied, based on Cpl. Smith’s due-diligence efforts outlined above (including the HSU review and approval), that the RCMP had reasonable grounds to

suspect that the person identified by the CI as Wally was trafficking in illegal drugs via the phone number provided;

4. “based on what [Cpl.] Smith told me about his [phone] interactions leading up to the meeting [with the CI], how our meeting [with the CI] went, plus the results of [Cpl. Smith’s and the HSU’s] database checks into the [CI], plus the information provided by the CI ..., I assessed this person as ‘believed reliability’, based on the totality of what we [had] learned so far ... I believed the [CI] to be truthful”;
5. he described “believed reliability” as “a term used in the police world ... fairly common terminology ... have we had an opportunity to use information from that person? If so, then I would say ‘past proven reliability’, but no such opportunity yet, so I would not say ‘unknown reliability’ ... because we had a chance to dig into some of the information and [Cpl.] Smith was able to corroborate a significant number of pieces of information from that [CI]”; and
6. “based on everything learned ... about the [CI], the information provided [by the CI], [Cpl.] Smith’s work, the HSU’s work ... specifically [about] Wally, and in reviewing [Cpl.] Smith’s target sheet, I felt we had reasonable suspicions [that] this unknown person Wally was already engaged in trafficking powder cocaine and K in the Edmonton area.”

[30] Armed with that information, in early October 2017 Sgt. Butz contacted a team within the Edmonton Police Service responsible for undercover (“UC”) drug investigations and relayed the “Wally” target sheet to them, requesting that they set up an undercover investigation of that person at the provided phone number.

[31] Sgt Butz testified that he shared his “reasonable suspicion” belief with the officers he contacted, saying that “from [the RCMP] end [of things], we had reached that [reasonable suspicion] threshold.” He added that, in a “perfect world”, it is always nice if the [undercover officers] can form their own reasonable suspicion” about the flagged person i.e. before offering an opportunity to commit a trafficking offence.

[32] On cross, he testified that the hand-over of the “Wally” target sheet to the UC team was one of about eight or nine handed over at the same time, that he could not recall having made specific comments about the “Wally” target sheet, and that the UC team “would certainly [have] presumed that he had reasonable suspicions [about Wally] i.e. by the very fact of handing over a target sheet.”

[33] He also testified on cross, about the “proven source information” box on the target sheet being checked, that “there was corroboration [of] information that was provided by this [CI] [that] helped us get to the reasonable-suspicion threshold” and that that corroboration was “the information that was provided during the source debriefing in early September [about] the three individuals [i.e.] [Cpl.] Smith’s database checks corroborating what he could.”

[34] Asked if it was fair to say that the “proven source” box was aimed at “no adverse findings from [the identified] source in the past”, he said that “proven source information” may refer more to the information itself, not so much assessing [the] reliability [of] the informant ... we had not actioned information from that [CI] before this buy, this investigation.”

[35] He added “When I look at [the checked box], it did not seem incorrect for it to be checked, based on the information received and efforts made to corroborate it ... the pieces of information corroborated [for] ... the two others ... it was impossible to not look at it in its entirety re ‘threshold’ reasonable suspicion.”

Defence position on this evidence

[36] The defence accepted the testimony of these officers, but emphasized the following:

1. the first officer (Cpl. Smith) was unable to corroborate any of the Wally-related information provided by the informant;
2. corroboration of some of the details relating to the two other individuals did not corroborate the Wally-related information or any of it;
3. Cpl. Smith erred in labelling the Wally-related information in the target sheet as “proven source information”, when none of the informant’s information had been proven i.e. shown to have exposed illegal drug trafficking;
4. the confidential informant here was paid for the tip provided (albeit downstream of the investigation and arrest of Mr. Zyp);
5. the second officer (Sgt. Butz) did not necessarily provide any “reasonable suspicion” assessment to the EPS team that conducted the undercover operation. He thought the team would infer from the very providing of the Wally target sheet that the investigators had formed a reasonable suspicion of that person’s in-progress drug-trafficking activities; and
6. Sgt. Butz would not have ranked this informant as of “proven” caliber, because (when the target sheet was prepared and handed over to the UC team), none of the informant’s tips had been tested and proven to be true.

Crown’s position on this evidence

[37] The Crown argued that:

1. the “totality of the circumstances” here includes the initial tip, the police due-diligence efforts into the informant’s background, and corroboration of some details of the tips about the two other people;
2. based on the due-diligence efforts into the CI’s background and the corroboration of certain details of the three-person tip (see below), Cpl. Smith had a reasonable suspicion the person associated with this phone number was currently engaged in drug trafficking;
3. Sgt. Butz was privy to the same due-diligence information, and accordingly he too (as confirmed by his testimony) had the same reasonable suspicion;
4. that information showed that, while the informant here was a “first-timer”, he or she:

- a. had been interviewed in person by these officers, both of whom were very experienced in dealing with confidential informants in a drug-trafficking context;
 - b. had said nothing and done nothing in the interview to cause either officer to doubt his or her veracity;
 - c. had no criminal record;
 - d. had provided detailed information about two other individuals perceived by him or her to be involved in drug trafficking, which the police had been able to corroborate in numerous respects (names, addresses, etc.);
 - e. had (per comparison to the other tips) no other information to relay about Wally than name, phone number, and “commodities handled” i.e. had provided all known information about Wally to the handler and his supervisor;
 - f. had been vetted by the handler, via Alberta RCMP and EPS databases, with a focus on any markers of concern as to truthfulness, with no such markers uncovered;
 - g. had been approved (i.e. as a “can use” informant) by the “K” Division’s Human Source Unit, which had performed the same and broader (Canada-wide) searches for any markers of concern, with none uncovered; and
 - h. was financially motivated to provide information but was not paid in advance i.e. only after this investigation had resulted in charges against Mr. Zyp; and
5. per *R v Caissey*³⁴, it is not necessary that the police corroborate the tipped-to criminal activity. Corroboration of details about two of the individuals perceived to be engaging in such activity is sufficient.

[38] Per the Crown, the reasonable-suspicion threshold was met here even before the target sheet was provided to the EPS officers, and it was not lost or diluted by any possible “information drop” in that relay or afterwards.

Evidence of these officers accepted

[39] I accept the entire evidence of these officers, which both offered in a clear, straightforward, and balanced fashion. As noted, the defence did not challenge any factual dimension of their testimony.

Application of reasonable-suspicion and CI law to this evidence

[40] I find that Cpl. Smith and Sgt. Butz did not have a reasonable suspicion that Wally or whoever was using the tipped-to cellphone number was already trafficking in illegal drugs, for these reasons:

1. the tip was not compelling: it was “bare-bones” (man named Wally – sells coke and K – Edmonton area – [phone number]), lacking a physical description, typical dress,

³⁴ 2007 ABCA 380; *affd* 2008 SCC 65

age, address or even community, other occupation(s), relationship status, information about relatives, friends, or associates, vehicle information, and all other possible biographical or identifying information;

2. it is unknown whether the tip was first-hand-, second-hand or even more remote. By contrast to the more detailed (with some biographical information) tips about the two other people, the Wally tip seems second-hand (or even more remote), with the CI appearing to have never seen Wally in person. Effectively, the tip contains as much information as might be found on a discarded matchbook or something written on a phone-booth or bathroom wall;
3. it is unknown whether the tip reflected current information;
4. it came from a first-time informer i.e. a person with no track record. That is not necessarily a blemish on the informer, but it means no track-record credibility boost;
5. the CI was paid for his or her Wally information, which (per the cases) is not necessarily a negative credibility factor, but no evidence showed that the police stressed or even mentioned the need for accurate information or the consequences of providing false information. Even on the “contingency” aspect (payment only for results), the police evidence was imprecise. While Cpl. Smith suggested that the CI understood “payments only for results”, his evidence was generalities (e.g. “As a matter of the way we do business, you get paid for results” and “I would normally explain to them ...”). It did not nail down the precise agreement or understanding with this CI;
6. the police’s due-diligence efforts (no criminal record, etc.) showed no blemish on the CI, but those efforts did not actually move the credibility needle from “neutral.” The absence of a record or criminal-law-system encounters does not necessarily imply positive credibility or reliability;
7. the police confirmation of some details of the other tips does not spill over to the Wally tip:
 - a. it is not enough that all three tips came from one person;
 - b. without knowing anything about the first-hand versus second-hand (or more remote) nature of any of the tips, or the tipster’s particular “window” into a given target (i.e. how he or she acquired the tipped information), or whether his or her windows overlapped to any degree (e.g. “my window into the life of Person #1 allowed me also to see into Wally’s life”), or any particular connection between Wally and either or both of the other people, confirmation of some details of the “other people” information says nothing about whether the CI should be regarded as more credible or reliable on the Wally front;
 - c. this is especially so when the two “good” tips seem to reflect first-hand dealings with those individuals, versus nothing to reflect that re Wally? Perhaps the CI provided fulsome information about the two “with detail” individuals and then

said “Oh, I also heard about this other guy, Wally”? Without us knowing *how* the CI came by all of this information, and *when*, the Wally tip ends up looking like one of the tips dumped on the table in the police station in *R v Swan*³⁵;

- d. the particular details about each of the other people may have justified increased confidence in *those respective tips* (e.g. knowing that the CI was right about person #1’s home address and vehicle increases confidence that he or she is right about the other things he or she said about person #1, including their drug dealing). But until those tips were actually “actioned”, and only if they had proved to be accurate, it was premature to regard the CI as (effectively) “the kind of person who can be counted on to provide accurate tips”;
- e. imagine if, instead of three tips being provided at the same time, the CI had first provided the other two tips and then, before any actioning of those tips, had provided the Wally tip. Would we have regarded the CI as having the kind of “track record” needed to justify confidence in a tipster, for the new (Wally) tip? Or would we have regarded the CI as essentially untested i.e. with no fruit having been yielded by his or her initial tips? I suggest the latter: basic biographical information may boost the weight of a given tip, but it does not endow the tipster with “core reliability or credibility”, in the sense of “this is the kind of person whose word is gold”;
- f. the police did not first try to action the other tips, to see if they panned out (i.e. to see if they actually had a good tipster) before moving on the bare-bones Wally tip; and
- g. my conclusion on this aspect is the same as in *R v Durling*³⁶, where the trial judge held:

The source is unproven and anonymous. There is very little to support the source's trustworthiness.

The references to information provided concerning two other persons is only slightly helpful and adds very little if any to support the source's credibility. [neither trial nor CA judgment reflects the details of that information] [rest of trial-judgment excerpt omitted]; and

8. no other corroboration was made of any of the Wally tip’s elements. With all the other shortfalls noted above, the absence of corroboration is particularly telling: As Aitkin J. found in *R v Boucher*³⁷, in the context of a first-time informant:

In terms of assessing the reliability of the information obtained from Informer #1, the detailed nature of the information and the fact that at least part of it emanated from personal observations are

³⁵ 2009 BCCA 142 at paras 23 and 24

³⁶ 2006 NSCA 124

³⁷ 2011 ONSC 5052

positive factors. As well, Hill determined that Informer #1 had no criminal convictions and no criminal charges relating to perjury. ***Since Informer #1 was a first-time, non-coded informant, there was no track record of previous tips resulting in criminal charges or convictions. This makes the existence of other corroborative evidence particularly significant.*** [emphasis added]

Conclusion on upstream reasonable suspicion

[41] The CI's information was not compelling (lacking detail, "proximity" information (first-hand? second-hand? more remote?), and "currency" information). With no track record and in light of the limited "cautions" evidence on financial motivation, the CI's credibility and reliability are neutral, at best. And the Wally tip was not corroborated in any material way.

[42] I find that the CI-contact officers did not, in these circumstances, have a reasonable suspicion that Wally was an active trafficker.

[43] Accordingly, I do not have to explore whether a "reasonable suspicion" baton was dropped as it was passed along to the EPS officers or within their ranks.

[44] I now consider whether, despite the absence of upstream reasonable suspicion, the UC officer, armed with the tip, developed her own reasonable suspicion in her dialogue with Wally.

Did Cst. Daoud develop a reasonable suspicion before offering opportunity to commit?

[45] The answer is yes.

[46] I find that, during the text conversation, and before she offered Wally an opportunity to commit an offence, Cst. Daoud developed a reasonable suspicion of in-progress drug trafficking, as discussed next.

Text conversation (annotated)

1. The text conversation starts with:

Cst. Daoud (undercover or UC): Heyyyy wasss good?!

Other party (OP): Who's this?

2. OP's response – wondering who is contact him or her – is natural and accordingly neutral in the assessment of "reasonable suspicion." It is an almost universal response in this circumstance of an unknown caller or texter.
3. The next segment is equally neutral on the "reasonable suspicion" front:

UC: Jenny [with waving-female emoji]

OP: what up cuz?

4. Here OP exhibits a common, perhaps equally universal reaction (albeit featuring substandard or informal grammar and word usage) i.e. offering a greeting to an apparent acquaintance. (At this stage, OP apparently believes the incoming texts are from his cousin Jenny).

5. At this stage, Cst. Daoud moves from “warming up” to investigative steps. She answers:

UC: Nt much jus chillin wit ma gurl

[followed shortly by]

UC: ws lookin 2 grb. u round?

6. In the “Nt much” response, Cst. Daoud did not dispel OP’s misunderstanding that he or she was texting with his or her cousin Jenny. Instead, she offered a neutral comment about what she was apparently up to with a friend i.e. not much. Her next text – “Ws lookin 2 grb. u round?” – features, in addition to the informal spelling and grammar seen earlier, an unfamiliar-to-most-people expression: “2 grb.”
7. The unfamiliarity comes not from the “2” element, which [most people] understand is shorthand for “to” in such constructions (“looking 2 grb”), but from the word “grb.”
8. “Grb” is obviously shorthand for something. As Cst. Daoud explained it, “lookin 2 grb” is shorthand for “looking to grab”, which in turn is a commonly understood expression, in the drug-trafficking world, for seeking to purchase illegal drugs. (In *Ahmad*, the Supreme Court held (at para 76) that “The officer was entitled to rely on what he knew of illicit drug transactions and all of the circumstances, as well as the response “What do you need?” in response to a request that he “help ... out” a stranger, in forming reasonable suspicion that the individual with whom he was speaking was engaged in drug trafficking”);
9. The OP responded with a single message containing four questions:

OP: Jenny what’s ur last name[?] this isn’t Jenny p is it? How’d you get this number?³⁸ [line space] What do u need?
10. The first two questions return to the subject of the texter’s identification, effectively “Who are you? You’re not my cousin Jenny, are you?”
11. The third question is telling: OP does not ask who the texter was trying to contact (e.g. “Who are you texting?” “Who are you trying to contact?”), instead asking how the texter got the number? In other words, the threshold question for OP was not who the texter was hoping to reach but how the texter managed to get the number. Implicit or inherent here is that who the texter was trying to reach is unimportant or less important: it is how the texter came to have the number, *regardless of who received the text*.
12. Also significant at this stage is the lack of any response along the lines of “What do you want? What do you mean by “lookin 2 grb”? What is this about?” From OP’s questions, it is apparent that he or she understands what the call is about i.e. appreciates what “lookin 2 grb” signifies i.e. the desire to purchase illegal drugs. OP’s critical concern is to find out how the texter came to have his or her number: did the

³⁸ Incidentally, Jenny’s number was not 867-5309.

- texter receive it from a “safe person” i.e. someone who could be trusted to pass along the number to a person interested in purchasing illegal drugs *and not* part of law enforcement? Is the texter possibly part of law enforcement, who received the number from an informant or other “non-safe-for OP source”? Or, by chance, did the texter reach him or her purely by chance e.g. by “random texting”?
13. At this stage, OP’s focus is trying to tease out the nature of this call: a “safe call”, an “unsafe call” or “cannot tell” call.
 14. A non-trafficker recipient of the messages to this point would be trying to pin down two things: who is texting, and who is that person trying to reach? Is this a familiar or an unfamiliar person on the other side of the conversation, and, regardless, who is the person trying to reach. Assume “John Smith”, a person not involved in drug trafficking, is the person receiving the text: ordinarily he would be trying to gauge, at this point in the conversation, who is texting and whether that person is trying to reach him. The first “order of business”, ordinarily speaking, is finding out if the texter is actually trying to contact John Smith: if not, the text can be disregarded (“sorry, you’re reaching the wrong person.”) If the texter is indeed seeking John Smith, the next order of business is finding out who is texting and why.
 15. The subject of *how* the texter got Mr. Smith’s number might come up, but only later, after he had identified that the texter was actually trying to contact him and determining that the texter was unfamiliar to him (not a family member, not a friend, not an acquaintance, not anyone who might be expected to have the number). At that point, and only if the texter was unfamiliar, the question might be put: “How did you get my number?”
 16. Again, in the present case, and despite any initial uncertainty about who the texter was (cousin Jenny? Someone else?), OP’s focus was not “who are you trying to reach” but “how did you get this number?” As explained above, this reflects a focus on the *nature* of the caller, with the *purpose of the call* already apparent, courtesy of “lookin 2 grb.” In other words, with Cst Daoud having stated her purpose – effectively, looking for drugs, OP was aiming at one thing: is this a safe caller or not?
 17. And, significantly, OP is impatient. Instead of waiting until he finds out how the texter got his number, OP asks “What do u need?” And this is part of the same text described just above. In the “same breath”, OP asks (effectively): “Who are you? How did you get this number? What do you need?”
 18. Even if a non-trafficker had picked up, from the “lookin 2 grb” message, that the texter was wanting something (“looking to grab, or get, something”), such a person would still be keying on who was calling and who they were trying to reach (“I understand that you want something, but why are you trying to reach *me* for whatever it is you are after?”). Only once that had been sorted out – “Oh, you’re actually trying to reach Tom’s Towing? ... you’ve got the wrong person” or “you were trying to reach me ... well, you’ve got me”) would the focus shift to the *reason* for the call.

19. Here, without waiting to find out who was texting, and without even asking who the texter was trying to reach, OP asks “what do u need?” By asking this, he or she signals that he or she is not actually interested in whether the texter is familiar or not: an unfamiliar person would be fine as long as he or she is “safe.” And, in so doing, OP confirms that persons reaching someone at this number, at least as long as they are “safe”, can, or might be able to, get something they need.
20. Again, anyone unclear about who was texting and who that person was trying to reach would not be asking, at this stage, “what do you need?” They would first try to flush out “who are you texting? Are you actually trying to reach me?”, before exploring any “express needs.”
21. This is the critical moment in the conversation. Reduced to its essentials, Cst. Daoud has said “I’m looking for drugs”, and OP has conveyed, via “What do you need?”, that he is in the drug business and is “open for business.” Critically, as well, this happens before Cst. Daoud gives OP an opportunity to commit a criminal offence, which comes next (at the earliest). She replies: “No last names over txt ;) jus lookin for 1 :)” As she explained it, that is street language for [“powder cocaine”].
22. OP’s response here is also telling: “How did u get this number”. He or she has now been told that the texter is not willing to disclose his or her surname i.e. wants to continue the dialogue without making full disclosure of his or her identity. And he or she has also received a somewhat cryptic (to most people) message that the texter is “jus lookin for 1”.
23. At this stage, a non-trafficker would presumably terminate the conversation: “If you’re not willing to tell me who you are, I’m not continuing to communicate with you.” Or at least reiterate the request (or demand) for the texter to identify him- or herself before the dialogue could continue.
24. Instead, OP surfaces just one of his four questions reviewed above. He no longer cares who in particular the texter is (as reflected in not asking again “if you are not cousin Jenny, who are you?”), and he does not ask again “what do u need”? (having been told initially that the texter was “lookin 2 grb” and more recently that he or she was “lookin for 1”). Not asking for clarification of either of these two semi-cryptic messages signals that OP is familiar with these shorthand street terms i.e. he or she speaks the language of the street drug trade and has “gotten the message” that the texter is (1) looking for illegal drugs and (2) in particular, soft cocaine.
25. Instead, OP returns to his or her central focus now: “How did u get this number” i.e. are you a safe person to continue conversing with in this vein?
26. This is not a conversational volley or rhythm that would occur with a non-trafficker.
27. Cst Daoud responds: “Jess :)”). She testified that she “improvised” that response.
28. Her improvisation obviously worked. OP responded enthusiastically:

AHH okay lol I totally thought u were my cousin Jenny at first then things didn't add up lol [line space] Okay so u want 100 of soft?

29. Obviously OP regarded “Jess”, whoever that might be, as a “safe person” to have relayed his or her number to the texter. “Jess” was the key that unlocked his cooperation. Now satisfied he was on “safe ground”, he confirms Cst. Daoud’s order of “100 soft.”

30. And the conversation continued, culminating in the delivery of the ordered commodity.

[47] The bottom line here is that Cst. Daoud did not offer an opportunity to commit a criminal offence, within the meaning of the case law, until after the conversation, up to and including Mr. Zyp’s “what do you need?”, had sparked a reasonable suspicion in her mind that he was already in gear in the drug-trafficking world.

[48] In other words, her conversation to that point, or any point, did not pull him off a non-drug-trafficking path and launch him (or even re-launch) him into that business: he was already launched, and rolling, and Cst. Daoud’s texts were just part of a day’s work for him.

[49] This conclusion squares with the SCC’s decision in *Ahmad*. Here are the key paragraphs:

[71] The only question to be answered in deciding each appeal is whether, based on the constellation of factors known to police, they had a reasonable suspicion that the target or the phone number was engaged in drug trafficking at the time the officer provided an opportunity to commit a crime.

[72] In Ahmad’s case, D.C. Limsiaco received a tip that “Romeo” was selling drugs using a particular phone number. He called the number and engaged in the following conversation:

Male: Hello

Officer: Hey, It’s Mike, Matt said I can give you a call, this is Romeo?

Male: He did, did he?

Officer: Yeah, said you can help me out?

Male: What do you need?

Officer: 2 soft

Male: Hold on, I’ll get back to you.

Officer: Alright.

(*Ahmad* stay decision, at para. 21)

[73] **D.C. Limsiaco provided an opportunity for Ahmad to commit drug trafficking when he asked for “2 soft” in response to the question, “What do you need?”** In context, given the meaning of “2 soft,” this amounted to asking Ahmad whether he would sell him two grams of cocaine. Since the *CDSA* allows trafficking to be committed by a simple offer to sell drugs, saying “yes” to the officer’s question would have constituted trafficking. **Of course, asking whether Ahmad could “help [him] out,” as the officer did earlier, was *not* an opportunity to traffic. Responding “yes” to that question would not have been trafficking, because the inquiry had not been narrowed to a particular substance listed in a schedule of the *CDSA*.**

[74] Given the point at which the opportunity was provided, **the constellation of factors that existed at that time consisted of the tip and the nature of Ahmad’s responses to D.C. Limsiaco’s questions.**

[75] **Allen J. concluded that reasonable suspicion crystallized when Ahmad asked D.C. Limsiaco, “What do you need?”** By that point, the officer had asked Ahmad if he went by the name “Romeo,” which he did not deny. **When the officer asked Ahmad, “[Y]ou can help me out?”, Ahmad responded positively to this use of language particular to the drug subculture: “What do you need?”** Having connected the tip to the person on the phone, the aspect of the tip that asserted illegality was corroborated by Ahmad’s understanding of drug-trafficking slang and willingness to engage in it. **Allen J. found that, in this context, these markers of reliability together sufficiently corroborated the initial tip to give rise to an objective possibility that Ahmad was involved in drug trafficking before the officer asked for “2 soft.”**

[76] While this is an extremely close call, we are satisfied that Allen J. did not err in her conclusion that the police had a reasonable suspicion of drug trafficking before providing the opportunity to commit an offence. **We acknowledge that the answer “What do you need?” to the question “[Y]ou can help me out?” can admit of innocent responses, but the reasonable suspicion standard did not require the police to direct the conversation to rule out innocent explanations for Ahmad’s positive response.** Nor can the question and answer be assessed in isolation. It came after the officer’s references to both Romeo and the police’s concocted “drop name” Matt, and after Ahmad evinced no surprise and did not deny he was Romeo or ask who Matt was. **Significantly, he betrayed no surprise that a stranger, on another person’s recommendation, would be reaching out to him for “help”; in fact, he did the opposite, continuing to engage the caller to ascertain what he wanted. The officer was entitled to rely on what he knew of illicit drug transactions and all of the circumstances, as well as the response “What do you need?” in response to a request that he “help . . . out” a stranger, in forming reasonable suspicion that the individual with whom he was speaking was engaged in drug trafficking. Perhaps no one of these factors, on its own, was sufficient to establish reasonable suspicion. But we share Allen J.’s conclusion that, taken together, they disclosed a**

reasonable possibility that this individual was involved in drug trafficking.
[emphasis added]

[50] I do not see the name (“Romeo”) aspect as a material difference from the present case. Cst. Daoud did not ask for “Wally” at the start of their text conversation, but the SCC confirmed in elsewhere in *Ahmad*³⁹ that the police’s reasonable suspicion can focus on a person or a phone number:

... police must have reasonable suspicion over an individual or a well-defined virtual space, like a phone number, before providing an opportunity to commit a crime.

We emphasize that the virtual space in question must be defined with sufficient precision in order to ground reasonable suspicion. **Reviewing courts must scrutinize the evidence that prompted the inquiry to ensure the police have narrowed their scope so that the purview of their inquiry is no broader than the evidence allows.** To ensure that random virtue testing is avoided, factors such as (but not limited to) the following may be helpful: the seriousness of the crime in question; the time of day and the number of activities and persons who might be affected; whether racial profiling, stereotyping or reliance on vulnerabilities played a part in the selection of the location; the level of privacy expected in the area or space; the importance of the virtual space to freedom of expression; and the availability of other, less intrusive investigative techniques.

As previously explained, an individual phone number is sufficiently precise and narrow to qualify as a place for the purposes of the first branch of the entrapment doctrine. We agree with Himel J.: “. . . phones are increasingly personal” and, in most cases, there will be “little real difference between information that the police obtain about the phone line and information that they obtain about the person who answers it” (C.A. reasons, at para. 109). Typically, and as Himel J. noted, it will be a distinction without a difference, since **reasonable suspicion over one grounds reasonable suspicion over the other.** We therefore ought not to force categorical distinctions based upon the form such information takes — that is, information about people and information about their location (or phone numbers). **Ultimately, it is a person before the court as an accused. And the question will always be the same: are there objective factors supporting a reasonable suspicion of drug trafficking by the individual answering the cell phone when police provide the opportunity to commit such a crime? Those factors may relate in part to reasonable suspicion of the individual, or of the phone number itself, or to both.**
[emphasis added]

[51] The defence did not argue that any of the “random virtue testing” factors in the middle paragraph above are in play. The police focused on the one phone number that formed part of the “Wally” tip. The “looking for drugs” outreach to that number by Cst. Daoud netted the “what do you need?” response by the phone answerer, whether or not Cst. Daoud asked for “Wally” by name. Whoever answered, and it turned out to be Mr. Zyp, was ready, willing, and able to deal

³⁹ Paras 40, 41 and 42

drugs, and switched on his “open for business” sign before Cst. Daoud placed her order, and she placed it only once she had a reasonable suspicion of that openness to do business.

[52] That is not entrapment as the SCC has defined it in *Ahmad*.

D. Conclusion

[53] For these reasons, I dismiss Mr. Zyp’s application for a stay of proceedings.

Heard on the 25th day of February, 2020 to the 26th day of February, 2020.
Additional written submissions received June 18th, 2020 and July 2nd, 2020.

Dated at the City of Edmonton, Alberta this 26th day of August, 2020.

M. J. Lema
J.C.Q.B.A.

Appearances:

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Public Prosecution Service of Canada
for the Crown

Patrick Edgerton
Northcott Edgerton
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