EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

IN THE DISTRICT COURT
AT TAURANGA

CRI-2017-070-003205
[2018] NZDC 3375

THE QUEEN

v

TE PONUI POHATU

Hearing:	23 February 2018
Appearances:	S Davison for the Crown R Webby for the Defendant
Judgment:	26 February 2018

RESERVED JUDGMENT OF JUDGE T R INGRAM

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[1] Mr Pohatu faces charges of unlawful possession of a pistol and unlawful possession of ammunition.

[2] On 15 August 2017, a search warrant was executed on a dwelling in a rural location known as [address deleted]. A warrant to search that property had been obtained in relation to the activities of another man, a Mr Raki. On searching the defendant's bedroom the police located a cut-down .22 rifle and 17 rounds of ammunition.

[3] Objection has been taken to the admissibility of the evidence obtained during the execution of the search warrant. Ms Webby submitted that the application for the search warrant insufficiently particularised the location of [the address], because two other dwellings are to be found on the same site, both of which share that same address.

[4] Mr Pohatu lived with his mother and a number of other people in a single storeyed dwelling, with an adjacent shed or garage. Two other dwellings which fit exactly that description are to be found within a radius of approximately 100 metres from Mr Pohatu's residence. An apparently communal mailbox stands about equidistant from all the dwellings, although an unmarked mailbox in amongst overgrowing vegetation is also to be found immediately adjacent to Mr Pohatu's dwelling.

[5] The police were looking for items, allegedly taken in a burglary by Mr Raki, who had been apprehended following a ram-raid, and who bore a significant physical resemblance to a man captured on CCTV in relation to another burglary. Mr Raki had given his address as [the address] and he had informed an interviewing detective that he lived in a shed on that address. When asked by the police where he was going at the time of his apprehension, which immediately followed a ram-raid with a substantial quantity of stolen goods in the vehicle he was driving, he replied that he was heading home. He indicated that he lived in a shed on the property with his partner.

[6] That information was relayed by interviewing police officers to Detective Constable McKechnie, who promptly applied for a search warrant. His application

recites that he had previously been stationed in Te Puke for two years and had visited [the address] on numerous occasions. He described it as a single level dwelling with a garage to the rear, with the garage being split into two parts, one used for a gathering drinking area and the other as accommodation. No map or GPS coordinates were included in the search warrant application.

[7] A Google Maps printout was provided in evidence, together with photographic evidence of the buildings to be found on the property at [the address]. The evidence before me left me in no doubt that there are three separate dwellings, all of which could meet the generic description provided by Detective Constable McKechnie. There are other outbuildings on the property, including a wharenui and a shed, which is close to the wharenui and not associated with any dwelling. On the evidence before me, it appears that Mr Raki lived in the shed near the wharenui, not adjacent to any dwelling-house, and not at the Pohatu dwelling.

[8] The detective was clear in his evidence that that dwelling he knew as [the address], and the associated shed, was the very dwelling occupied by Mr Pohatu and other members of his family, and not the other two dwellings. I was left in no doubt that had a marked-up Google Maps printout been annexed to the application for the search warrant, the dwelling which Detective Constable McKechnie intended to capture in his application for a search warrant would have been identified as the dwelling which was searched. He knew that there were other dwellings in close proximity, but I accept his evidence that he simply did not turn his mind to those dwellings, because of his prior experience with the dwelling occupied by Mr Pohatu, and the view that he held that the correct street address for the dwelling he intended to be searched was [address deleted]. Put another way, I am satisfied that the detective simply did not turn his mind to the other two dwellings, because he regarded the Pohatu dwelling as the one described by the address of [the address].

[9] Detective Constable McKechnie's views on the topic were tested in cross-examination and he was unshaken. I am satisfied that had he appended a map delineating or otherwise identifying the dwelling that he believed was identified by Mr Raki in his conversation with another detective, he would have marked or identified Mr Pohatu's residence. There can be no doubt that the police officers

executing the warrant were of the same view, because the only dwelling and shed searched by the police on 15 August was the dwelling Detective Constable McKechnie considered had been specified in his application for a search warrant.

[10] Ms Webby's point is that the warrant, on its face, could have applied to two other dwellings and shed. The Crown does not dispute that point, but counters by saying the dwelling searched was the dwelling that was intended to be covered by the search warrant. Whilst the dwelling could have been more particularly identified by marking up a Google search map, there was no misunderstanding, and nobody was misled. Mr Raki had given [the address] as his address. The police had applied for a search warrant for the address given, and had searched a dwelling occupied by the defendant, which his mother confirmed in evidence as having the address of [address deleted].

[11] I am not satisfied that the address search was misdescribed or insufficiently described in the search warrant. In a world where Google searches take a matter of minutes, in my view it would be desirable for police officers to routinely append a marked or shaded map to applications for search warrants, but the absence of such a map does not, in my view, amount to a misdescription of the address. I am not satisfied that the application for the warrant had any "…defect, irregularity, omission, or want of form that (was) likely to mislead anyone executing or affected by the warrant as to its purpose or scope…" as specified in s 107(1)(b) of the Search and Surveillance Act 2012. No-one was mislead. The dwelling-house that Detective Constable McKechnie intended to be searched was the one searched, and no other dwelling was searched.

[12] Further, I am not satisfied that there has been any bad faith on the part of Detective Constable McKechnie. He had prior experience in relation to the dwelling occupied by the defendant and his mother, he knew it as [the address] and I accept his evidence that he believed that dwelling to be the "home" that Mr Raki had referred to when asked where he was headed with the stolen property in his car. I am, accordingly, satisfied that there cannot possibly have been any bad faith on the part of Detective Constable McKechnie in making the application for the search warrant in the terms

that he did. It is also clear that neither searching police nor the occupants were in anyway misled.

[13] Accordingly, I am satisfied on the balance of probabilities that the search of the dwelling occupied by the defendant was lawful, being based on a search warrant that was properly issued on reasonable grounds for suspicion that evidence relevant to the burglary enquiry raised in relation to Mr Raki may have been found at that address. I am, accordingly, satisfied that there was no impropriety in the way that the evidence was obtained.

[14] In case I be wrong about any of my conclusions, and if some impropriety occurred in the application for the search warrant, I turn to address the question of whether the exclusion of the evidence would be a justified remedy and the provisions of s 30 of the Evidence Act 2006. The search of the dwelling involves an intrusion on a very important right to privacy. The evidence obtained, namely a sawn-off .22 pistol and appropriate ammunition, is almost overwhelmingly probative of guilt, given that a presumption of law operates where a firearm is found in a building. The defendant acknowledged at the time that the items belonged to him.

[15] The offense is serious, because there is no legitimate purpose for possession of a sawn-off .22 calibre pistol and ammunition, as such a weapon is almost entirely useless for hunting or any other legitimate purpose.

[16] Any impropriety must therefore relate to the adequacy of the address description. As indicated, there are a number of dwellings at [the address] and the dwelling could have been more fulsomely described or identified by the provision of GPS coordinates or the attachment of a marked-up Google Map to the application. But had that been done, the address identified would have been the address searched. It was an address known specifically to Detective Constable McKechnie, and it must have been known to those tasked with executing the search warrant, because that is the address that was searched.

[17] At its highest for the defence, it might be said that a more detailed identification of the particular dwelling could have been achieved had the detective turned his mind to it. But had he done so, the result would have been exactly the same.

[18] In my view, such impropriety as might conceivably attach to the detective's failure to provide a Google Map as part of his application for a search warrant, and recognising that had he done what the defence submit was required in these circumstances, exactly the same result would have obtained, it is my view that the exclusion of the evidence obtained would be entirely disproportionate to that impropriety. Giving appropriate weight to the impropriety and taking proper account of the need for an effective and credible system of justice, I have reached the view that the only possible conclusion available on the evidence before me is that the evidence should be admitted at the defendant's trial.

[19] There will, accordingly, be an order for the admission of the evidence at that the defendant's trial.

T R Ingram
District Court Judge