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Communities Giving Voice to Sexual Assault Victims

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**IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF AN APPLICATION FOR AN AUTHORIZATION
TO INTERCEPT PRIVATE COMMUNICATIONS PURSUANT TO
SECTION 184.2 OF THE CRIMINAL CODE**

**AND IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTIONS 487.02 OF THE CRIMINAL CODE
FOR ASSISTANCE ORDERS**

BETWEEN

HER MAJESTY THE QUEEN

APPLICANT

- and -

S.

OBJECTS

Affidavit

I, Michael John BELLIVEAU, a member of the Calgary Police Service, in the City of Calgary, Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am a Peace Officer assigned to the Calgary Police Service (hereinafter referred to as “CPS”), Sex Crimes Unit, and as such have personal knowledge of the matters hereinafter deposed to except where the same are stated to be upon information and belief and where so stated I believe them to be true;
2. My reasonable grounds to believe that the offences of:
 - a. Sexual Assault on a female, contrary to section 271 of the Criminal Code of Canada.

SOURCES OF INFORMATION

3. The victim, reported to me, as a representative of the Calgary Police Service on February 26, 2003, that she had been sexually assaulted on February 19, 2003, in the early morning hours. I received an audiotaped disclosure from her, which detailed the event. I believe that the information supplied by the victim and contained within this affidavit is true;

GROUND FOR BELIEF

4. On February 26, 2003, the victim K, DOB: June 3, 1982 (hereinafter referred to as or), attended at the Calgary Police Service Sex Crimes Unit and disclosed to me that she had been the victim of a sexual assault by a friend of 6 years, DOB: February 9, 1983 (hereinafter referred to as S), on February 19th, 2003. statement can be summarized as follows:

- a. On Tuesday the 18th of February, 2003, I went out for the evening with a good friend of mine and a friend who was visiting from Regina, Saskatchewan. We drove my car to a bar called the Drink at about 11:00 p.m. where we visited and had a good time throughout the evening. At around 2:00A.M., we decided to leave the bar and head home. S wanted to drive my car but I told him he was too drunk to drive and that I didn't want him to drive my car. He became angry and demanded the keys to drive. I still refused and my friend from Regina decided to take a taxicab back to my parent's house as he was tired and wanted to go home. I was concerned about my car and didn't want to leave it where it was.

A friend of named, who works at the Drink, said he would drive us home, as he had not been drinking. He did bring a quantity of beer with him and put it in the car. I agreed to this and we drove over to a friend of near 17th Avenue and 14th Street S.W. We arrived at the house and a guy named answered the door and let us in. He lived at this place with his boyfriend and they were both friends of. I went into the living room and began playing video games with, and another guy

with glasses were in the kitchen at the time.

After awhile, said that I should have a tour of the house and I went along with and to look around the house. We looked around and then went upstairs to see the upper areas of the house. boyfriend came up and was very excited to show off the house also. As we got to and bedroom, said I should go to the window and look at the view. I did this and several seconds later was behind me trying to kiss me. I saw close the door and turned out the lights. I asked what was going on and he pushed me back onto the bed. I tried to get back up and he pushed me back down a second time.

He pulled my shirt off and then undid his button and zipper and pulled his pants down. He kneeled down on the bed and tried to kiss me on the lips. He grabbed my left breast and twisted it, hurting me. I kept trying to get him to stop doing this, but he kept going. I tried to tell him that we were good friends and that he had a girlfriend. He kept forcing me down and then he tried to force my legs apart. I tried to prevent him from doing this but he was being very aggressive and I couldn't keep him from finally pulling my legs apart. I tried to push him off me but I was not able to do it.

He was hurting me because he was trying to force his penis into me but there was no moisture so he licked his hand a few times and put it down on my vagina. He kept trying to force himself into me. It was very painful and I was crying, yelling at him to stop. I fought with him to get him off me. I kept telling him that we were friends and he was hurting me. I kept asking him why he was doing this and he said that he loved me and he wanted me to let him finish. He asked me if I was on the pill because he wanted to come in me. I yelled at him no way, get off me. He said don't cry. I kept trying to get him off me but I couldn't. He wouldn't stop until the door opened and stood there.

He got up and said that he needed to go talk to his friends. He then asked me why I wouldn't finish having sex with him. I told him no over and over but he didn't listen. I grabbed my clothes and put them back on. I then went downstairs because was yelling at me that we had to go. I walked past and he gave me his cell phone number and said 'I can help you'. I walked outside ahead of and he closed and locked the door leaving me outside in the cold. They then turned out the lights of the house leaving me in the dark outside.

I walked around the neighborhood, not knowing where I was or how I would get home. I called my boyfriend in Vancouver. I spoke to him because I needed our friend cell phone number so he could come and pick me up. I didn't want to talk to my parents about what happened at that time and I was upset and frightened.

came and picked me up and took me to his grandparent's house where he was living. I then called my friend cell phone while she was in Houston, Texas, because I was hysterical and needed to talk to her. E. called my parents who came and took me to the hospital.

5. I telephoned the victim's mother, on February 20, 2003. She stated that her daughter, had been out with friends on the night of February 18th, 2003, into the early morning hours of February 19th, 2003. In the early morning hours of February 19th, parents received a telephone call at their residence from E, a friend of K. They were advised that had been attacked while she was out, and was now at grandparent's residence. E also advised that they took K. to the hospital to be looked at and that K had told her that her friend S had sexually assaulted her.

6. On February 25, 2003, I received the Doctor's report with regard to the sexual assault complaint involving K. The attending physician, Dr. P observed injuries to K's left breast area, which were consistent with the statement given by K that S had grabbed and twisted her left breast during the assault. There was also indication provided by the fluorescent blue dye Toluidine of minor abrasions to the outer vaginal area. This dye adheres to fresh abrasions on the body.

7. On February 26th, 2003, at 9:25 a.m., K and Mrs. M attended at the Calgary Police Service Sex Crimes Unit, located at 133 - 6 Avenue S.E. At this time, K provided a verbal audio taped disclosure statement regarding the details of the sexual assault. She

stated that she had been sexually assaulted by her friend of six years, S. She stated that this had taken place at the residence located at Avenue S.W., which she stated, belonged to two friends of S, S and J the last names she did not know. She stated that she was picked up by E and taken to his grandparent's house where E was living. Her parents then arrived and took her to the hospital.

8. On February 28, 2003, E attended at the Sex Crimes Unit to provide a written statement on his knowledge of the incident. The statement is summarized as follows:
 - a. E stated that he had received a telephone call at his grandparent's residence from K who stated that she needed his help and for him to come and pick her up. E stated that K said to him "S is going to get me", "S is going to kill me, I don't know what he will do!" E tried to determine where K was located so he could come and pick her up. He told her to go to a Mac's Convenience Store she was able to see as she was walking and wait there for him. She was able to tell him that she was near 17th Avenue S.W. While he was enroute, he received a call from K's boyfriend J who wanted to know what was going on. E advised him that he did not know yet but would phone him as soon as he knew. E located K on 17th Avenue near 16th Street S.W.

E stated that K was in very bad condition, frightened, cold and crying with her makeup running and clothes disheveled. He stated that when she got into his truck, K told him "S raped me E!" K related the incident to him saying that S had taken her to the upstairs of a house, which belonged to a friend of S's. S then began to roughly undress K and pushed her on the bed. She was crying and telling him to stop and fighting with him. S kept telling her to let him finish and was angry with her when she was able to finally push him off her. She went downstairs after he left the room and S told her to go outside. They then locked her out of the residence. E then took her to his grandparent's residence and called K's parents. K's parents attended at the residence and took her to the hospital to be examined.

9. In the afternoon of February 28th, 2003, K's boyfriend J attended the Sex Crimes Unit office and was interviewed by me. He provided a written statement with regard to the incident, as he knew it. The statement is summarized as follows:

- a. At 3:30 a.m. Pacific time, his mother awakened him with a phone call from K. K was upset and had been crying and then asked for the cell phone number of a mutual friend of theirs, E. J asked what was wrong and she told him she would call him in the morning. He asked her where she was and she replied she was on the street but didn't know where. He phoned E and E said that K had told him S had 'gone crazy or something'. E told him he was going to go get K.

About twenty minutes later, J called E back and was told that he had located K and she was safe. Later that morning, at approximately 6:30 a.m. Pacific time, E called J back and told him what had happened as he knew it. He related that S had sexually assaulted K and that she had gone to the hospital to be examined.

10. On March 6, 2003, A, the best friend of K, attended at the Sex Crimes Unit office to provide a statement with regard to the incident, as she knew it. Her statement is summarized as follows:

- a. A was visiting relatives in Houston, Texas, when she checked her cellular telephone messages on the morning of February 19. She found two messages on her voicemail machine. The first message was left at 1:00 a.m. on the morning of February 19th, 2003, and was left by K stating she was out with S and their friend T at the Drink nightclub. K stated that she missed Alaina and wished her a happy birthday.

The second message was left at 5:00 a.m. on that same morning by K again. She was upset and crying hysterically on the phone. K did not tell A why she was crying, but told A to call her when she had a chance. A attempted to contact K by telephone at her residence and on her cellular telephone. She was unable to locate her at all. A again tried to contact K at both telephone numbers around 12:00 p.m. on the same day. Still with negative results. At this point, A contacted S and he made the statement to her that he thought he drove K and himself to his house and when K was all right to drive, she drove home.

A was able to finally make contact with K later in the evening at which time K told A the whole story of what had taken place. This included the events leading up to and including the sexual assault and those events that transpired afterwards.

11. I have discussed with K that she consider permitting the interception of her communications during conversations with the person with knowledge of the sexual assault and she has consented. She has also consented to take direction from police and has agreed to be a witness in court.
12. The person who has consented to the interception of her private communication is:
 - a. K, who currently resides at 19 N.W., Calgary, Alberta; Occupation: Student; hereinafter described as the consenting person.
13. A copy of the consent form to intercept the private communications of the consenting person, which was signed by K, on March 13, 2003 and witnessed by, is attached to this Affidavit as Exhibit "A".
14. My reasonable grounds to believe that information concerning the offences will be obtained through the interception of the private communications of the consenting person are as follows:
 - a. K has known the suspect for over six years and knows that his current address Road N.W., where he lives with his parents. His home telephone number is .
 - b. I believe that S is aware of possible police involvement, but due to their close six year friendship, I believe that if K makes the telephone call to S, he will not be

suspicious of her motive for calling and may speak freely to her about what had occurred;

15. Further to my Information:

- a. Should my application be granted, it is intended that the consenting person may telephone S from the 13th floor of the police station in the Andrew Davidson Building located at 133 – 6th Avenue Southeast, Calgary, Alberta. The consenting person may engage in conversation in hope that S will talk about the sexual assault. Questions to be used by the consenting person in conversation with the known person may be scripted by me;
- b. Should my application be granted, it is intended that the consenting person may telephone from her residence at 19 N.W. Calgary, Alberta. The consenting person may engage in conversation in hope that S will talk about the sexual assault. Questions to be used by the consenting person in conversation with the known person may be scripted by me;
- c. Should my application be granted, the consenting person might also be instructed to meet with and to engage in conversation relating to the sexual assault. Questions for the consenting person may be scripted by the investigator to be used in the conversation by the consenting person;
- d. In the event there exists a concern for the safety of the consenting person or police officers involved in the investigation, surveillance may be in place to cover the meeting that may occur. Police officers may monitor the conversation out of sight and others may be in a position so as to prevent harm to anyone involved in the investigation;
- e. Should any recorded conversation reveal evidence of the commission of a criminal offence or of a conspiracy to commit a criminal offence, the suspects may be arrested and interviewed.

16. The types of private communications to be intercepted are:

- a. Oral communications, and
- b. Telecommunications, including cellular and radio-based telecommunications.

17. The identity of the known person whose private communications with the consenting person are proposed to be intercepted are:

a. S, currently residing Road N.W. Calgary, Alberta; Occupation: Labourer;

It is proposed that only those private communications between the known person and the consenting person may be intercepted.

18. The place where it is proposed that the private communications of the consenting person with the known and/or unknown persons will be intercepted is:

a. The 13th floor of the Andrew Davidson Building, CPS Headquarters Building located at 133 – 6th Avenue Southeast, Calgary, Alberta;

b. The residence of, located at 19 N.W. Calgary, Alberta;

c. At any other place, stationary or mobile in Alberta that the consenting person is using or attending or can be reasonably expected to use or attend;

including telephone lines and relevant exchanges leading to these places.

19. It is proposed that the interception of the private communications of unknown persons may occur under the following conditions:

a. Any other persons at the places set out in Paragraph 15, or at any other place when the consenting person is present with a known person;

b. When an unknown person answers the telephone at any time a consenting person places a telephone call to a place where the monitor believes on reasonable grounds the known person may be contacted.

20. It is proposed that the manner of interception of the private communications of the consenting person with a known person is to listen to and/or to record their private communications by use of an electromagnetic, acoustic, mechanical or other devices that are capable of being used to intercept a private communication. If a body pack is used to intercept communications, the type of electromagnetic, acoustic, or mechanical device utilized will be a mini-tape recorder, a microphone with a battery-powered transmitter or a digital recording device. If a microphone and battery-powered transmitter are utilized, the Applicant and/or any other person acting in aid of or at the direction or request of the Applicant shall intercept the transmissions at a remote location. The person who may be fitted with a body pack shall be the consenting person and only when the consenting person is about to have, or is engaged in, or has just completed a conversation with a known person.
21. It is proposed that no communications may be intercepted pursuant to this Authorization at the office or residence of a solicitor, or at any other place ordinarily used by a solicitor and by other solicitors for the purpose of consultation with clients.
22. It is proposed that for the purpose of giving effect to this Authorization, in the case of any telephone, cellular telephone or radio-based communication company in Canada requiring an assistance order as a condition of carrying out the terms of this Authorization, an assistance order be granted pursuant to Section 487.02 of the Criminal Code, namely, that

any telephone, cellular telephone or radio-based communication company in Canada shall provide such assistance as is necessary to give effect to this Authorization. Without restricting the generality of the foregoing, such telephone, cellular telephone or radio-based communication company shall furnish the persons hereby authorized all information, facilities and technical assistance necessary to accomplish interception unobtrusively and with a minimum of interference with the services that such company is according to the person or persons whose communications are to be intercepted or is providing to the premises referred to in this Authorization.

- 23. The period of which the Authorization is requested is 60 days.
- 24. To my knowledge and belief no authorization pursuant to s. 184.2, 184.3 or s. 186 has been previously granted or refused.
- 25. I make this Affidavit in support of an Application for an Authorization to Intercept Private Communications pursuant to s. 184.2 of the Criminal Code.

SWORN before me, at the City of Calgary,)
)
in the Province of Alberta,)
)
this 13 day of March, 2003.)

A Commissioner for Oaths in and for the Province of Alberta