

CITATION: R. v. Tohl, 2012 ONCA 9
DATE: 20120106
DOCKET: C52458

COURT OF APPEAL FOR ONTARIO

Sharpe, Blair and Rouleau JJ.A.

BETWEEN:

Her Majesty the Queen

Respondent

and

Mohamad Tohl

Appellant

Mohamad Tohl, in person

C. Mainville, Duty Counsel

V. Goela for the Public Prosecution Service of Canada

Heard: December 22, 2011

On appeal from convictions imposed by Justice Michel Charbonneau of the Superior Court of Justice dated June 25, 2010.

ENDORSEMENT

[1] Mr. Tohl seeks to set aside his convictions for possession of cocaine and marihuana for purposes of trafficking, and for unlawful possession of proceeds of property obtained by crime. As duty counsel on his behalf, Ms. Mainville ably argued,

- a) that the trial judge erred in concluding that there were sufficient grounds to issue the search warrant in respect of his residence; and,
- b) that in light of the fact the search warrant – which had been issued in Quebec – was endorsed in Ontario without the proper record being placed before the endorsing justice, the trial judge erred in concluding that there was no violation of the appellant’s s. 8 *Charter* rights.

[2] We reject these arguments.

[3] We did not find it necessary to call on the Crown with respect to the warrant endorsement issue. The Ontario Justice of the Peace who endorsed the warrant had the warrant before her. We are satisfied that in the circumstances of this case the warrant contained sufficient information to enable to conduct her statutory duty under s. 11(3) of the *Controlled Drug and Substances Act* S.C. 1996, c 19, which is to endorse the warrant as a justice having jurisdiction in Ontario. There is nothing in the record to indicate she failed to carry out her duties properly in this regard.

[4] Nor would we give effect to the argument that there were insufficient grounds set out in the information to obtain the warrant (the “ITO”) on which the issuing justice in Quebec could have issued the warrant to search Mr. Tohl’s residence at 1380 Prince of Wales Dr. in Ottawa.

[5] The trial judge applied the correct test for review of a search warrant. There was more than ample evidence in the ITO, as he found, to support the conclusion – for purposes of issuing the warrant – that Mr. Tohl was actively engaged in supplying drugs to the Chahwan brothers on a regular basis and in substantial amounts, and that he had a

supplier who was known by police to be a large drug supplier himself. At the same time, the trial judge noted that there must be “a link with the place to be searched, namely in this case, his residence,” in order to justify the warrant. The issue is whether the evidence, as a whole, is sufficient to establish that link here.

[6] We agree with Ms. Mainville, that the trial judge appears to have overstated the evidence of that connection somewhat. He concluded that there were “a number of pieces of evidence which indicate a link to the place to be searched,” In this respect, the trial judge said:

Mr. Tohl, during all of this period when he was under surveillance, on a number of occasions, left his residence and went directly to the residence of [Mr.] Chahwan in circumstances, which under surveillance, led the police to suspect that he was bringing drugs to Mr. Chahwan. He was observed attending at the residence of Mr. Elouta, the larger supplier I have talked about, picking up some packages and then coming back to his own residence in the context also that led the investigators or the surveillance officers [to believe] that he was picking up drugs and he, at that point in time, returned to his residence. On a number of occasions, when he drove to the Chahwan residence, not long after the undercover agents purchased drugs, again the surveillance established him as being the person in control of this apartment at 1380 Prince of Wales.

[7] The ITO does not support the finding that “on a number of occasions” the surveillance showed that Mr. Tohl “left his residence and went directly to the residence of [Mr.] Chahwan.” There appears to be no such direct evidence. However, we are satisfied that despite this error, there was sufficient evidence to establish the required link with the appellant’s residence and to support the conclusion that Mr. Tohl was the person

in control of the apartment at 1380 Prince of Wales St. in Ottawa. There is also direct evidence of one occasion on which Mr. Tohl attended at the residence of his supplier, Mr. Elouta, apparently obtained a quantity of drugs there, and returned directly to his residence.

[8] In addition, there is one other piece of evidence in the ITO that, when considered in the light of the rest of the evidence, supports an inference that there may be evidence of drug crime activity in Mr. Tohl's home: Mr. Tohl has been arrested on drug-related charges before and the last time he was, he was found to have almost a kilo of cocaine in his possession at his home.

[9] Accordingly, and notwithstanding that the trial judge overstated the evidence of a direct connection between the drug dealing and Mr. Tohl's residence, we are satisfied that there was sufficient evidence in the ITO from which the issuing judge could reasonably have inferred that a search of Mr. Tohl's premises at 1380 Prince of Wales in Ottawa would reveal evidence of criminal activity contrary to the *Controlled Drugs and Substances Act*.

[10] The appeal is therefore dismissed.

“Robert J. Sharpe J.A.”

“R.A. Blair J.A.”

“Paul Rouleau J.A.”