

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Cranham, 2012 ONCA 457

DATE: 20120628

DOCKET: C53083

Laskin, Blair and Hoy JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Sydney Cranham

Appellant

Sydney Cranham, acting in person

Howard Krongold, as duty counsel

Ghazala Zaman, for the respondent

Heard: June 13, 2012

On appeal from the conviction entered on December 9, 2010 and the sentence imposed on December 9, 2010 by Justice D. Kent Kirkland of the Ontario Court of Justice, sitting without a jury.

ENDORSEMENT

[1] The appellant appeals his conviction for trafficking twenty dollars worth of crack cocaine. The issue at trial was identity. The trial judge was unable to identify the appellant as the trafficker captured in surveillance photographs. The appellant argues that in the circumstances the trial judge erred in relying on the

opinion of police officers that appellant is the trafficker (the “Individual”) in the surveillance photographs.

[2] We agree. The verdict cannot be supported by the evidence.

[3] The drug transaction occurred on March 2, 2010. Detective Dikah, a plain clothes officer, observed the trafficker from a distance of two to three feet during the course of the transaction.

[4] Sergeant Campbell, who was some 60 to 70 feet away, took surveillance photographs and made notes describing the trafficker as age 45, wearing blue jeans, a long black parka, a black toque and black sunglasses. The trafficker’s hair is not visible in the surveillance photographs.

[5] Later on March 2, 2010, Detective Dikah confirmed that the individual in the surveillance photographs taken by Sergeant Campbell was the trafficker.

[6] There was a bench warrant for the arrest of the appellant. The appellant resembled the picture accompanying the warrant and, on March 5, Constable Siddons arrested him. Constable Siddons “believed”, was “pretty certain”, or “certain” that the appellant was also the trafficker in the surveillance photograph taken by Sergeant Campbell that he had seen a few days before. Constable Siddons testified that the appellant was wearing big square sunglasses and his cheeks were sunken at the time of his arrest.

[7] Following the appellant's arrest, neither Detective Dikah nor Sergeant Campbell was shown a line-up including the appellant and neither confirmed that the appellant was the trafficker in the surveillance photographs.

[8] At trial, Detective Dikah identified the appellant as the trafficker he observed some nine months earlier. He noted that on March 2, 2010, the appellant's "cheeks were a little bit sunken and now they're a little fuller". He observed that the appellant had gained weight. He expressed confidence that the fact that the trafficker wore a toque and large sunglasses on March 2, 2010 did not compromise his ability to make an in-court identification of the appellant. Detective Dikah had not recorded in his notes, and did not remember, that the trafficker had worn a toque. The surveillance photos indicate that the trafficker wore a long parka, and not the leather jacket recorded in Detective Dikah's notes. At trial, the appellant's hair was dirty blond and not the brown recorded by Detective Dikah in his notes.

[9] Sergeant Campbell testified that he was certain that the appellant is the trafficker in the surveillance photographs. He also commented that the trafficker was thinner on March 2, 2010. Sergeant Campbell conceded that the appellant has a light blue tattoo on his left hand and no tattoo is visible on the left hand of the trafficker in the surveillance photographs.

[10] Constable Siddons also observed that the appellant was heavier than at the time of his arrest.

[11] The trial judge properly noted that in-dock identification must be given very little weight. This court has warned of its inherent frailties, particularly where, as here, the person identified is a stranger to the witness. Many wrongful convictions have resulted from faulty eyewitness testimony. Identification findings are subject to closer appellate scrutiny than other findings of fact. See *R. v. Goran*, [2008] O.J. No. 1069 (C.A.).

[12] The trial judge continued:

... I cannot possibly identify the man who is in this witness box as the one that I see in the photographs. For me to even consider finding him guilty on the basis of my personal observation and what I see in the photographs, would be a total miscarriage of justice.

... Campbell, Dikah and Siddons – had occasion to personally observe Mr. Cranham, and they said the person in the photograph is the person they observed on site when the photographs were taken and the transaction was underway.

... police officers are more highly trained to make observations of circumstances, that is, surrounding circumstances, individuals who are involved (in) life-style activities than the average citizen, especially officers with any period of training ... These officers stated, every one of them, as they stood, or sat here in the witness box, they had no difficulty in identifying Mr. Cranham as the person in the photographs, and therefore, the person who was involved in the transaction.

I am accepting their evidence. I believe it to be reliable. That being the case, I am satisfied that the Crown has proved beyond a reasonable doubt that Mr. Cranham is the person who was involved in the transaction and guilty of the offences with which he is charged

[13] In our view, the trial judge erred in relying on the opinions of Sergeant Campbell and Constable Siddons that the appellant was the trafficker in the surveillance photographs when he was unable to do so, based on his own observations. There was no basis for concluding that they had any greater expertise, particular advantage, or special knowledge, in identifying whether the appellant was the trafficker in the surveillance photographs. Constable Siddons did not know the appellant, and had not observed the trafficker, before he arrested the appellant on March 5, 2010. He did not make notes as to what the appellant was wearing at the time of his arrest. No photograph of the appellant at the time of his arrest was proffered as evidence. Neither Detective Dikah nor Sergeant Campbell knew or recognized the trafficker on March 2, 2010. Sergeant Campbell was at too great a distance to observe the trafficker on March 2, 2010. (After the photographs were taken, Detective Dikah confirmed that the individual in the surveillance photographs was the trafficker.) Only Detective Dikah was in a position to observe the trafficker. He saw the trafficker only once, briefly, nine months before. He did not remember that the trafficker wore a toque, and some of his observations on March 2, 2010 were inaccurate.

[14] To the extent that the trial judge relied on the opinions of Sergeant Campbell and Detective Dikah despite his own conclusion that he could not possibly identify the appellant as the trafficker in the surveillance photographs, he seemingly gave weight to the very in-dock identification by Detective Dikah that he had cautioned himself should be given very little weight.

[15] Accordingly, the appeal from conviction is allowed and the appellant's conviction is quashed.

"John Laskin J.A."

"R.A. Blair J.A."

"Alexandra Hoy J.A."