

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Durette, 2015 ONCA 668

DATE: 20151001

DOCKET: C58222

Doherty, Benotto and Miller JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Richard Durette

Appellant

Bernadette Saad, for the appellant

Stephen Dawson, for the respondent

Heard: September 25, 2015

On appeal from the convictions entered by Justice Mulligan of the Superior Court of Justice, dated August 26, 2013.

APPEAL BOOK ENDORSEMENT

[1] There are three issues.

**(i) Was the Crown required to disclose the O.P.P. Protocols in reference to confidential informants (CIs) upon request of the defence prior to trial?**

[2] We need not determine whether the O.P.P. protocols were properly treated as first party or third party records for the purpose of disclosure. We will assume they were first party records.

[3] In our view, the protocols were not relevant when the defence sought production. They were potentially relevant to the s. 8 challenge to the search warrant depending largely on the trial judge's ruling as to the cross-examination of the affiants. In our view, the trial judge did not err in declining to order disclosure prior to the bringing of the s. 8 motion. Any determination of the relevance of the material at that time would have been premature. We make no comment on the potential relevance of the material to the s. 8 *voir dire* and, in particular, on the cross-examination of the officers.

**(ii) Was the search warrant properly granted?**

[4] Counsel recognizes the standard of review and argues that on the material as amplified on the voir dire, there was no basis upon which a justice, acting reasonably, could have issued the warrant. We disagree. The information could reasonably be viewed as compelling (direct evidence of drug dealing from two sources) and there was some confirmation of the evidence provided by the CIs.

We do not accept that the discrepancies in the affidavit could justify a finding that the affiant deliberately misled the justice of the peace.

**(iii) Did the evidence justify a finding of possession?**

[5] There was ample evidence from which the trial judge could make the factual findings necessary for a finding of possession. Counsel, quite properly, acknowledges that the trial judge did not misapprehend the evidence.

[6] The appeal is dismissed.