COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Rojas-Machuca, 2018 ONCA 390
DATE: 20180420
DOCKET: C61625

Benotto, Brown and Miller JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Fred Rojas-Machuca

Appellant

Cate Martell, for the appellant

Xenia Proestos and Brigid Luke, for the respondent

Heard and released orally: April 18, 2018

On appeal from the conviction entered on December 4, 2015 by Justice Robert P. Villeneuve of the Ontario Court of Justice.

REASONS FOR DECISION

[1] The appellant was convicted of possession of cocaine for the purpose of trafficking, possession of marijuana, and possession of stolen property. He appeals on the basis that the evidence obtained during the execution of a search warrant at his residence should have been excluded. He submits that the reviewing justice erred in considering the sufficiency of the Information to Obtain (ITO).

[2] Three Confidential Informants provided information to police officers about the appellant's involvement in drug trafficking:

- CI #1 witnessed transactions in March, May, August, September and November 2014. CI #1 told police that the appellant was observed in possession of cocaine, that he kept cocaine inside his residence and that he delivered his product on foot.
- CI #2 observed three drug transactions and said the appellant was constantly delivering cocaine but made no link between the drug trafficking and the appellant's residence.
- CI #3 saw individuals approach the appellant's residence, bend down and drop something then pick something up. The information was that the front door is used for drug transactions.

[3] Following a blended *voir dire*, the trial judge concluded at (page 22) that: "The ITO adequately sets out grounds to believe that the [appellant] carried out the business of selling cocaine from his residence".

[4] The appellant submits that this conclusion involves three broad errors by the trial judge:

1. He did not properly consider the sufficiency of the grounds in relation to the location to be searched. He submits that the information from CI#1 was conclusory, and CI#3 was untested. The evidence merely established that the appellant lived at the residence, not that evidence would be located there.
2. He failed to appreciate the staleness of the information because the observations dating back to March were of no significance with respect to the search warrant sought in November.
3. He did not assess the credibility and reliability of the information in accordance with factors in *Debot* by

> assessing the informants on a global basis instead of considering the information separately.

[5] We do not accept these submissions.

[6] CI #1's information was that he witnessed five cocaine transactions between March and November, two of which were at the appellant's residence. The trial judge found this information detailed, based on personal information and compelling. In conjunction with the information from CI #2 and #3, it was reasonable to conclude that evidence of drug trafficking would be found at the appellant's residence.

[7] As to timing, CI#1 provided information of cocaine trafficking by the appellant in November 2014. The trial judge found that this information, given to the police in early November "provides, in my view, reasonable grounds to conclude that [the appellant] was in possession of cocaine at or very near the time of the execution of the search warrant".

[8] Lastly, in our view, the trial judge assessed each informer's information using the *Debot* criteria. There was no pooling of the informers as alleged by the appellant. He addressed the credibility and reliability of each informer and specified where and how he found corroboration. CI #1's information was that he witnessed two cocaine transactions at Mr. Rojas' residence. CI #2's information was found to be equally credible, and the source of his information was in the ITO. CI#1 and #2

had been proven to be credible in the past. CI #3 provided information based on personal observations.

[9] As there was no *Charter* breach, it is not necessary to address the appellant's s. 24(2) submissions.

[10] The appeal is dismissed.

"M.L. Benotto J.A."
"David Brown J.A."
"B.W. Miller J.A."