

# COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Magyar, 2018 ONCA 697

DATE: 20180823

DOCKET: C59620

Watt, Huscroft and Fairburn JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Frank Magyar

Appellant

Chris Sewrattan, for the appellant

Jeremy Streeter, for the respondent

Heard and released orally: August 20, 2018

On appeal from the conviction entered on March 3, 2014 and the sentence imposed on November 14, 2014 by Justice Thomas J. Carey of the Superior Court of Justice, sitting without a jury.

## REASONS FOR DECISION

[1] The appellant challenges the conclusion reached by the trial judge on the *Garofoli* application advanced at trial in connection with the *CDSA* warrant issued for a warehouse search.

[2] The appellant does not suggest that the trial judge stated the test incorrectly or misapplied it. The specific complaints advanced are that:

- i. the affiant failed to disclose relevant information in the ITO;
- ii. the affiant included inappropriate opinion in the ITO;
- iii. the affiant intentionally misled the authorizing judge; and
- iv. the ITO recited insufficient grounds that marijuana would be found in the warehouse premises.

[3] We disagree.

[4] The sole issue in controversy was whether marijuana would be found at the warehouse. Read as a whole, the ITO provided an ample evidentiary basis for this conclusion. The trial judge specifically addressed the claim of omissions in the ITO. His conclusion is well supported by the record.

[5] We see no basis upon which to find that the affiant was being untruthful or that he provided inappropriate opinion in the ITO, issues that appear to be raised here for the first time.

[6] In the result, we see no basis upon which to interfere with the trial judge's conclusion that there was no breach of s. 8 in connection with the search of the warehouse premises. Accordingly, we do not reach the issue of evidentiary exclusion under s. 24(2) of the *Charter*. The appeal from conviction is dismissed.

[7] The appellant also appealed the sentence imposed upon him at trial. We are not satisfied that the sentence imposed reflects an error in principle or is otherwise

unfit. While leave to appeal sentence is granted, the appeal from sentence is dismissed.

“David Watt J.A.”

“Grant Huscroft J.A.”

“Fairburn J.A.”