COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Iraheta, 2020 ONCA 766
DATE: 20201211
DOCKET: C63271

Simmons, Watt and Roberts JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Renzzo Iraheta

Appellant

Mark C. Halfyard and Chris Rudnicki, for the appellant

Philippe G. Cowle, for the respondent

Heard: October 1, 2020 by videoconference

On appeal from the convictions entered by Justice John B. McMahon of the Superior Court of Justice on December 5, 2016.

REASONS FOR DECISION

[1] The appellant appeals from his convictions for possession of a loaded prohibited firearm and possession of a prohibited firearm. The main issues on appeal are the facial validity of the warrant authorizing the search of the appellant's home; whether information obtained from a confidential information was sufficiently corroborated to support the issuance of the warrant; and whether the police acted reasonably in the execution of the warrant when they sealed, seized

and towed a vehicle located on the appellant's property. The rulings at issue were made on a *Charter* application to exclude evidence seized by police, which was dismissed by Justice Susan G. Himel of the Superior Court of Justice (the "application judge") on December 1, 2016, with reasons dated April 24, 2017: *R. v. Iraheta and Ramos-Duenas*, 2017 ONSC 2467.

Brief Factual Background

[2] After receiving information from a confidential informant, the police obtained a warrant to search the dwelling unit located at 1 Cobbler Crescent to seize marijuana and drug paraphernalia. On December 3, 2014, while conducting surveillance at 1 Cobbler Crescent, police observed a person matching the description of the appellant leave the property in a vehicle. After stopping the vehicle and identifying the driver as the appellant, the police detained and subsequently arrested him.

[3] That same day, the police executed the search warrant at 1 Cobbler Crescent, with some officers entering the front and others entering the rear. Upon entering the premises, the police discovered that there were two separate units at 1 Cobbler Crescent, with a family unrelated to the appellant residing in the front unit. After realizing that the appellant resided in the rear unit, the police vacated the front unit and proceeded to search the rear unit.

[4] On December 3, 2014, following the execution of the search warrant, the police discovered several prohibited firearms and ammunition, controlled substances, drug paraphernalia, and documents in the appellant's residence at 1 Cobbler Crescent.

[5] While searching the appellant's residence, the police saw a Ford Fusion vehicle in the appellant's backyard and observed a safe through the vehicle window. The police subsequently sealed the doors to the vehicle and arranged for it to be towed to the police garage. On December 4, 2014, the police executed an additional warrant to search the Ford Fusion vehicle, where they discovered weapons, ammunition, drugs, and counterfeit money.

[6] The appellant was charged with several firearm related offences, possession of a controlled substance for the purpose of trafficking, and possession of counterfeit money. He challenged the sufficiency of the information to obtain the search warrants for his residence and vehicle, and alleged that his rights under ss. 8, 9, 10(a), and 10(b) of the *Charter of Rights and Freedoms* had been infringed.

[7] The application judge dismissed the appellant's *Charter* application for the following reasons that are relevant to the appeal:[1]

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[1] The application judge also rejected the appellant's argument that he was arbitrarily detained and arrested when police stopped and searched the vehicle he was driving, finding that the detention was lawful and the search was incident to arrest. Finally, the application judge rejected the appellant's argument that he was

1. She rejected the appellant's argument that the police should have obtained another search warrant once they realized 1 Cobbler Crescent was divided into two units because the "[p]olice searched the address for which the warrant was authorized and where the target of the investigation allegedly resided."

2. She determined that the search of the appellant's residence was a lawful search because there were reasonable and probable grounds on which the search warrant could be issued. She also found that the confidential informant's information on which the information to obtain for the search warrant largely depended was credible, compelling, and corroborated.

3. She concluded that there was no evidence of police misconduct during the search of the appellant's Ford Fusion vehicle that was towed from his backyard. She further rejected the evidence of the neighbour who testified that she saw the police searching the vehicle in the backyard before it was towed, as this evidence lacked credibility. She found that the police sealed the doors to the vehicle and had it towed to the police garage. The search of the vehicle was lawful because there were reasonable and probable grounds for the justice of the peace to issue the search warrant for the Ford Fusion.

4. While she found no *Charter* breaches, if she were incorrect, the application judge concluded that any breaches were technical and minimal, the police acted reasonably and treated the appellant fairly and respectfully, and the reliable and crucial evidence gleaned from the searches, on which the respondent's case depended, was needed to allow the case to proceed. Therefore, the evidence should not be excluded from the appellant's trial.

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not provided meaningful rights to counsel, finding that the police complied with the obligation to inform the appellant of his right to counsel at key instances. These issues under ss. 9, 10(a), and 10(b) of the *Charter* were not raised on appeal.

[8] Following the dismissal of his application, the appellant did not contest the evidence presented by the respondent. After entering a plea of not guilty, the appellant was convicted on December 5, 2016 of the offences of possession of a loaded prohibited firearm and possession of a prohibited firearm. At the time of the offences, he was subject to a weapons prohibition order under s. 109 of the *Criminal Code*, R.S.C. 1985, c. C-46. On January 17, 2017, he received a global custodial sentence of 96 months, less 44 months' credit for pre-sentence custody.

Issues

[9] The appellant appeals from his convictions and does so by challenging the ruling on his *Charter* application. He pursued the following grounds on the hearing of his appeal:

> i. The application judge erred in upholding the validity of the search warrant for 1 Cobbler Crescent. Relying on this court's judgment in *R. v. Ting*, 2016 ONCA 57, 333 C.C.C. (3d) 516, the appellant says the search warrant was facially invalid because it did not particularize the specific unit to be searched in a multi-unit residence.
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> ii. The application judge erred in determining that the information to obtain the search warrant for the residence was sufficient, having regard to the three criteria under *R. v. Debot*, [1989] 2 S.C.R. 1140, at p. 1168, which state that the information should be compelling, credible, and corroborated. In particular, the appellant argues the application judge erred in her conclusion that the information provided by the confidential informant was corroborated.
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> iii. The application judge erred in failing to consider whether the police improperly exceeded the scope of the

> search warrant for 1 Cobbler Crescent by seizing a vehicle from the property that was searched.
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> iv. If the appellant's submissions are accepted, the searches of the appellant's home and Ford Fusion vehicle represented serious breaches of his rights under s. 8 of the *Charter*. As a result, the evidence seized by the police from his residence and vehicle should be excluded under s. 24(2) of the *Charter*, the convictions set aside, and acquittals entered.

Analysis

(i) The search warrant for 1 Cobbler Crescent sufficiently described the place to be searched

[10] Relying on *Ting*, the appellant submits that when the police learned that the search warrant did not accurately describe his unit, in the absence of exigent circumstances, they should have stopped their search and obtained further judicial authorization to search the appellant's particular unit.

[11] We do not accept this submission.

[12] In our view, the appellant's reliance on *Ting* is misplaced in the circumstances of this case. The question of whether a search warrant adequately describes a location to be searched depends on the particular circumstances of the case. As Miller J.A. stated for the court in *Ting*, at para. 51, "Just what constitutes an adequate description will vary with the location to be searched and the circumstances of each case."

[13] In *Ting*, the police obtained a search warrant for 4204B (rear unit) Dundas Street, West. Following an investigation, they concluded that a front-facing door labelled 4204B provided an entrance to what they mistakenly believed were two residential units, one front and one rear, located in a mixed-use plaza at 4204 Dundas Street, West. They also believed Valerie Pham, the occupant of the rear unit, was the target of their search. Not realizing that this address also contained a basement apartment, they believed Ms. Pham's unit could be accessed through both the front-facing door labelled 4204B and a rear entrance. After entering both the front-facing door and the rear door leading to the Pham apartment, the police mistakenly entered the basement apartment of Suet Stacy Ting. After searching her apartment, the police realized Ms. Ting was the actual target of their investigation. They stopped their search and applied for second warrant, this time describing the location to be searched as 4204B Dundas Street, West, as opposed to 4204B (basement unit), Dundas Street, West.

[14] There are several important distinctions between *Ting* and the present case. First, although the police in *Ting* immediately discovered their mistake, they continued their search of Ms. Ting's apartment, which was not the stated target of the search warrant. Second, upon concluding that Ms. Ting's residence was the true focus of their search, while they stopped their search, the police did not leave the premises while they applied for further judicial authorization to continue the search of Ms. Ting's apartment. Third, the police applied for another search

warrant for 4204B Dundas Street, West, without particularizing Ms. Ting's unit, which they then knew was the basement unit at that address.

[15] In the particular circumstances of this case, it was not necessary for the police to stop their search in order to obtain another search warrant. The search warrant adequately described the location to be searched: it correctly stated that the search was for the dwelling unit located at 1 Cobbler Crescent, which is where the appellant lived. There is no dispute that at the time of the search, the appellant resided with his co-accused girlfriend and her two young children in the rear unit of 1 Cobbler Crescent. That another family lived in the front unit of the same address, a fact unknown to the police when they applied for the warrant, does not, by itself, render the warrant's description inadequate.

[16] As the application judge found, there was no indication from the outside that the house was divided into multiple units: 1 Cobbler Crescent is a small, one-storey detached house; there were no separate unit numbers; there was one mailbox, one doorbell, and one utility meter. Surveillance would not have assisted the police in discerning that there were two units. As there was no indication from the outside of the dwelling house that it contained two units, various comings and goings would not have alerted the police to the existence of two units.

[17] The police had clear boundaries to search the appellant's unit and did not have to look past the warrant: *Ting*, at para. 59. They searched the precise location

of the target specified in the search warrant, namely, the dwelling unit located at 1 Cobbler Crescent, which is where the appellant resided. They conducted the search in a reasonable manner. They only searched the rear unit. Upon entering the front unit occupied by the other tenant, the police realized their mistake and left the front unit.

[18] We see no error warranting appellate intervention.

(ii) The information to obtain the search warrant was sufficient

[19] The appellant submits that the search warrant was insufficient because it depended entirely on the information provided by an untested, first-time confidential informant. While he concedes that the information provided was compelling, the appellant maintains that the police were required to secure a higher level of corroboration of the information provided by a first-time confidential informant. He says the application judge erred in holding that the appellant's criminal record could be used to corroborate the confidential informant's information.

[20] We do not agree.

[21] The search warrant issued here pursuant to s. 11 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 ("*CDSA*"), is presumptively valid. The scope of the application judge's review was narrow and limited to the inquiry as to whether the record contained reliable evidence that might reasonably be believed and on

which a warrant could have been issued: *R. v. Sadikov*, 2014 ONCA 72, 305 C.C.C. (3d) 421, at paras. 84, 88. The scope of appellate review is more limited, as the appellate court owes deference to the findings below absent error of law, misapprehension of the evidence, or failure to consider relevant evidence: *Sadikov*, at para. 89. We see no such error here that would justify appellate intervention.

[22] The application judge properly stated and balanced the three *Debot* factors and found that the information was compelling, credible, and corroborated:

> In summary, the confidential informant gave a detailed description of the background and circumstances of the [appellant] including information showing that the confidential informant had knowledge of the [appellant]'s criminal activity. The information was specific and precise and did not contain details that could be based on rumour, coincidence, error, or falsehood. Finally, the information was sufficiently current. Overall, the information provided by the confidential informant, taken as a whole, was very compelling. [Citations omitted.]

[23] It is well established that each *Debot* factor does not form a separate test but that it is the totality of the circumstances that must meet the standard of reasonableness. Weaknesses in one area may be compensated, to some extent, by the strengths in the other two *Debot* factors: see *Debot*, at p. 1168.

[24] That is the case here. As the application judge found, the detailed information provided by the confidential informant was particularly compelling. She did not err in referencing the appellant's criminal record to corroborate the

confidential informant's knowledge of the appellant and to bolster the informant's credibility. The application judge did not rely solely on the appellant's past involvement in criminal activities but was satisfied on all the circumstances that she outlined in detail that there were reasonable and probable grounds to believe there would be evidence of a criminal offence in 1 Cobbler Crescent. We see no error in her analysis or conclusions.

[25] Given our conclusion that the application judge made no error in determining that the information to obtain was sufficient and the search warrant was validly issued, there is no need to consider the respondent's motion concerning sealed submissions.

(iii) The seizure of the appellant's Ford Fusion vehicle was justified

[26] The appellant submits that there was no lawful authority for the police to seize the appellant's Ford Fusion vehicle from 1 Cobbler Crescent. According to the appellant, the search warrant for the residence did not authorize the seizure of the vehicle and s. 11(8) of the *CDSA* operates only to the extent that the search warrant authorizes the seizure.

[27] We are not persuaded by these submissions.

[28] We start by noting that the appellant does not challenge the validity of the search warrant that was ultimately obtained to search the vehicle once it was towed to the police garage nor the subsequent search of the vehicle pursuant to

that warrant. Rather, the appellant says that the seizure of the vehicle from the appellant's backyard was warrantless and without authority.

[29] We disagree. The seizure of the vehicle was authorized under both s. 489(1)(c) of the *Criminal Code* and s. 11(8) of the *CDSA*. Under s. 489(1)(c) of the *Criminal Code*, the police were entitled to seize any thing that they believed on reasonable grounds would afford evidence in respect of an offence. Furthermore, the provisions of s. 11(8) of the *CDSA* do not limit the police to the things mentioned in the warrant. Notably, "in addition to the things mentioned in the warrant", s. 11(8) permits the seizure of "any thing that the peace officer believes on reasonable grounds has been obtained by or used in the commission of an offence or that will afford evidence in respect of an offence."

[30] Here, the evidence of the firearms, ammunition, controlled substances, and drug paraphernalia, as well as the presence of the safe in plain view in the appellant's Ford Fusion vehicle, informed the police's belief on reasonable grounds that the vehicle would "afford evidence in respect of an offence." In our view, in light of the evidence of firearms and drugs in the appellant's residence, it was both reasonable and necessary for the police to secure and tow the Ford Fusion vehicle that likely contained similar items away from the house and property, where children were present, to the police garage for safe-keeping until a warrant could be obtained for its search.

[31] We therefore dismiss this ground of appeal.

(iv) Whether the evidence should have been excluded under s. 24(2) of the *Charter*

[32] As we have upheld the application judge's conclusions, it is unnecessary that we consider her alternate analysis under s. 24(2) of the *Charter*.

Disposition

[33] We dismiss the appeal.

"Janet Simmons J.A."
"David Watt J.A."
"L.B. Roberts J.A."