

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Simm, 2008 NSCA 112

Date: 20081202

Docket: CAC 280447

Registry: Halifax

Between:

David Charles Earl Simm

Appellant

v.

Her Majesty the Queen

Respondent

Judge(s):

Roscoe, Bateman and Oland, JJ.A.

Appeal Heard:

December 2, 2008, in Halifax, Nova Scotia

Written Judgment:

December 4, 2008

Held:

Appeal is dismissed per reasons for judgment of Roscoe, J.A.; Bateman and Oland, JJ.A. concurring.

Counsel:

D. Mark Gardiner, for the appellant
Mark Scott and Misty R. Morrison, Articled Clerk,
for the respondent

Reasons for judgment:

[1] After his pretrial application alleging abuse of process and breaches of sections 7, 8, 9 and 10 of the **Charter** was dismissed by Justice Gregory Warner, the appellant pled guilty to three charges of unsafe storage of firearms, two charges of possession of stolen property over \$5000 and three charges of possession of an unregistered weapon. He was sentenced to a period of two years less one day imprisonment to be served in the community, pursuant to a joint recommendation. He now appeals from the pre-trial ruling respecting his right to be secure from unreasonable search and seizure.

[2] The appellant states the following ground of appeal:

The learned trial judge erred in law in finding that Mr. Simm's constitutional right to be secure against unreasonable search and seizure pursuant to section 8 of the **Canadian Charter of Rights and Freedoms** were not infringed and in failing to exclude such evidence obtained from the search from trial pursuant to s.24(2) of the **Charter**. Specifically, it is the Appellant's contention that the police officers who testified at the **Charter** hearing provided vastly contradictory testimony on crucial points of evidence and that the affiant of the Information to Obtain the Search Warrant was not credible and his testimony and his grounds for belief in swearing the Information to Obtain should not have been relied upon and the Search Warrant should have been quashed and the resultant evidence should have been ruled inadmissible.

[2] In his 33 page oral decision dealing with the s. 8 issue, the trial judge dealt with each of the appellant's arguments in remarkable detail including the challenge to the validity and sufficiency of the information to obtain the warrant and the manner of execution of the search warrant. He reviewed and applied the applicable law as set out in **R. v. Araujo**, [2000] 2 S.C.R. 992 and **R. v. Debot**, [1989] 2 S.C.R. 1140. He concluded, based on the evidence, his credibility findings, and his application of the relevant law that the information to obtain the warrant did not contain misleading references, material omissions, or lies by the police. He determined that there were reasonable and probable grounds to issue the search warrant.

[3] We have carefully reviewed the record and considered the argument of the appellant. We have applied the standard of review as set out in **R. v. Creelman**, 2007 NSCA 51 and have concluded the trial judge made no reviewable error.

[4] The appeal is therefore dismissed.

Roscoe, J.A.

Concurred in:

Bateman, J.A.

Oland, J.A.