C.A.C. No. 114211

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Veinot, 1995 NSCA 190
Roscoe, Jones and Bateman, JJ.A.

BETWEEN:

KELLY ANDREW VEINOT	)	
	)	Alan G. Ferrier
	)	for the Appellant
Appellant	)	
	)	
- and -	)	
	)	James Martin
	)	for the Respondent
HER MAJESTY THE QUEEN	)	
	)	
Respondent	)	Appeal Heard:
	)	September 26, 1995
	)	
	)	
	)	Judgment Delivered:
	)	September 29, 1995
	)	

THE COURT: Appeal dismissed per reasons for judgment of Jones, J.A.; Roscoe and Bateman, JJ.A. concurring.

JONES, J.A.:

The appellant applied for leave to appeal against his conviction and sentence on a charge that on January 6, 1993, he did unlawfully have in his possession cannabis marihuana for the purpose of trafficking contrary to s. 4(2) of the **Narcotic Control Act**. After hearing counsel the court dismissed the appeal with reasons to follow.

The R.C.M. Police had received information that the appellant was travelling on January 6, 1993, by car from New Germany to Liverpool with a quantity of marihuana. At approximately 2 p.m. Constable Christensen, while operating a police car, observed a vehicle on highway 8 proceeding towards Liverpool. The person on the passenger's side of the vehicle threw four plastic baggies containing marihuana onto the side of the road. Upon stopping the vehicle the officer found that Michael Crouse was the operator and the appellant was the passenger in the front seat. The baggies were recovered and contained a total of 73.4 grams of marihuana. The appellant's fingerprint was found on one bag and traces of cannabis were found in his clothing.

Constable Urquhart of the Liverpool Detachment informed Constable D. Rowter in Bridgewater of the search and as a result Constable Rowter swore an information on the same date to obtain a search warrant to search the appellant's residence in New Germany. A search warrant was obtained and as a result of the search of the appellant's residence further traces of marihuana were found, as well as larger bags containing traces of marihuana, a box of smaller baggies and a container for a "pescola scale".

On the appellant's trial a motion was made under s. 24(2) of the **Charter** for the exclusion of the evidence obtained under the search warrant on the ground that the affidavit in support of the warrant did not contain sufficient grounds to justify the issuance of the warrant. The trial judge held a **voir dire** in which Constables Rowter, Urquhart and Christensen testified. The

affidavit in support of the application contained the following information:

> The informant says that he has reasonable grounds for believing and does believe that there is a certain dwelling house, namely the dwelling house of Kelly Andrew Veinot at House #5626, Lake Road, New Germany, Lunenburg County in the said Province of Nova Scotia, a narcotic, to wit, cannabis marihuana by means of or in respect of which an offence under the **Narcotic Control Act** has been committed, namely the offence of possession of a narcotic for the purpose of trafficking, contrary to Section 4(2) of the **Narcotic Control Act**, and that his grounds for so believing are that
>
> On 92/12/08, information was received from a confidential source that Kelly Veinot was dealing hash from his residence and supplying a lot of people in the New Germany and Bridgewater area.
>
> Kelly Andrew Veinot is a known drug dealer to this office and in the past has been charged with possession for the purpose of trafficking in hashish.
>
> On 93/01/06, Cst. Daniel A. Rowter received information from Cst. Daniel Urquhart of Liverpool Detachment. Cst. Urquhart states he received information from a confidential source who stated that Kelly Andrew Veinot was coming from New Germany to Liverpool with a quantity of marihuana.
>
> On 92/01/06, Cst. James Christiansen observed a vehicle coming south on the #8 highway in Queen's County and when he was doing a routine turn observed Kelly Andrew Veinot throw out of the car, 4 bags of marihuana.
>
> Cst. Christiansen, as well stated, the driver of the vehicle, Michael Vincent Crouse indicated that he and Veinot came driving from Veinot's house in New Germany to Liverpool.

The trial judge held that a reference in the affidavit to the fact that the appellant had been previously charged with trafficking was improper as the appellant had been acquitted of that offence. The trial judge excised that reference from the affidavit. On the hearing of the appeal counsel for the Crown conceded that there were deficiencies in the affidavit including a typographical error in the date in paragraph 4. The trial judge after referring to other deficiencies which he did not consider fatal, concluded by stating:

> "We have the evidence that, from the, affidavit that he got this, that this information was information the Constable Christensen had given to him. It would have been better if it, and there is no question about that, if Constable Rowter had set it out as he got it. But not having done that in both of the cases I do not think is, is sufficient to strike that warrant down. He -- and when you look at that information in the Justice of the Peace's eyes he, he's reading it through from beginning to end and I'm satisfied that there is sufficient evidence before, or was sufficient evidence before the Justice of the Peace that he could have issued the warrant. Now I know there has been some comment made about that last paragraph, but I say this without any question, I know there is some question here about whether certain officers remembered certain details or not, but in order to put that paragraph in there if he didn't have that information I would have to, to say boldfacedly that Constable Rowter was not only being evasive but he was being a liar and I cannot say that and I wouldn't say that because hearing his evidence yes, he was not definite in certain areas, but where he didn't know he said he didn't know and that -- he had to have that information before he swore that out. It's true that he called at 3:45 in what his note says. If you look back at the evidence of the, of Constable Christensen this is when he completed taking the statement, but as I said, I am satisfied that he got that information before this document was completed and that, that information there is true. So based on that I am finding -- I am ruling that the information before the Justice of the Peace was sufficient upon which he acted judicially could have found sufficient evidence upon which there was sufficient evidence upon which to grant the search warrant and I would so rule."

The evidence was admitted on the trial. The only witness for the defence was the driver of the vehicle, Mr. Crouse who claimed that the marihuana in the vehicle was his. The jury rejected that evidence and entered a conviction.

The main issue on this appeal was whether the trial judge erred in ruling that the affidavit was sufficient to show that the issuing justice had reasonable grounds to believe that there was marihuana in the appellant's residence. Counsel for the appellant argued that there was not a sufficient nexus between the finding of the drug on the road and the appellant's residence. He referred to the deficiencies in the affidavit and what he perceived to be conflicts in the evidence of the police officers.

The test to be applied by the reviewing judge is whether "there is some evidence sufficient as a matter of law to provide reasonable ground to believe that there is in a building, receptacle or place anything that there is reasonable ground to believe will afford evidence with respect to the commission of an offence against the **Code**". **Re Church of Scientology (No. 6)** (1987), 31 C.C.C. (3d) 449 (Ont. C.A.) at p. 494. In weighing the evidence the totality of the circumstances must be considered. **R. v. DeBot** (1989), 52 C.C.C. (3d), 93 (S.C.C.). See also **R. v. Plant** (1993), 84 C.C.C. (3d) 203 (S.C.C.).

With respect the trial judge applied the appropriate tests in reviewing the affidavit. In doing so he carefully considered the evidence tendered on the **voir dire**. In considering the evidence he made specific findings on the issues of credibility as raised by the appellant. There is no basis for interfering with those findings in this court. After carefully reviewing the record we are in accord with the trial judge's conclusion that there was sufficient evidence as a matter of law to support the issuance of the warrant. The evidence is contained in grounds one, three, four and five of the affidavit.

The appeal against the conviction and sentence is dismissed. The appellant did not press the appeal against sentence.

J.A.

Concurred in:

Roscoe, J.A.

Bateman, J.A.