

R. v. Cornell, [2010] 2 S.C.R. 142 – Search & Seizure – Private Residence

Facts:

In 2005, the Calgary police received information from a confidential informant that Tuan Tran and Henry Nguyen were running a “dial-a-dope” cocaine trafficking operation. Tran and Nguyen were members of a violent crime gang called the Fresh Off the Boat gang. Police obtained search warrants to search two residences they believed were being used in the drug operation – Tran’s residence and Cornell’s residence and a motor vehicle the Nguyen frequently used. The warrants did not mention weapons, but specified cocaine, packaging equipment, score sheets and cash. Surveillance of the Cornell home led the police to believe that Jason Cornell was involved with Nguyen and that the house was being used to stash drugs. Jason’s cell phone had been found in a motor vehicle used by Nguyen and Nguyen was seen coming to the house on several occasions.

The residents of the Cornell residence were Lorraine Cornell and her three children, Ashley 17, Jason 21, and Robert 29. Robert had a mental disability. None of the Cornells had a criminal record, nor a history of violence.

The police carried out the search at 6 p.m. on November 30. At the time of the search, Nguyen was already in custody. The police did not announce themselves. They used a hard entry, sometimes called a dynamic entry, and broke down the door. Then, nine police officers entered. They were wearing balaclavas and body armour and had their weapons drawn. The police did not have the search warrant with them at the time of the entry. The lead investigator had the warrant. He arrived four to nine minutes after the entry. Lorraine Cornell and her daughter had left the house about fifteen minutes before the police entered. The only person in the house was Robert. He was handcuffed, but within four minutes the handcuffs had been removed and an officer and a paramedic were comforting him. The front door and frame were damaged, as were the garage door and four interior doors.

99.4 grams of cocaine were found in Jason Cornell’s bedroom. Jason was convicted of possession of cocaine for the purpose of trafficking. He appealed. His main argument was that the search was not reasonable and therefore the evidence (the 99.4 grams of cocaine) should not be admitted. The majority of the Court of Appeal agreed with the trial judge. Jason appealed to the Supreme Court of Canada.

The Decision:

The Supreme Court of Canada split 4 to 3. The majority felt that the search was reasonable, that the evidence should be admitted and that the conviction should stand. The police were concerned about the safety of the officers going in and about evidence possibly being destroyed, therefore the search, as

Discussion Questions:

- 1) The Supreme Court of Canada split 4 to 3 on this decision. Who do you agree with – the majority or the minority, and why? Read over the relevant law and support your answer with the appropriate sections of the legislation.
- 2) Can you think of circumstances where the use of a hard entry would not have been reasonable?
- 3) Should the police officers have had the warrant with them when they entered? Why or why not?
- 4) Justice Fish in his dissenting opinion says about the use of balaclavas: “Gratuitous intimidation of this sort – psychological violence entirely unrelated to the particular circumstances of the search – may itself render a search unreasonable.” Comment

Relevant Law:

Charter of Rights and Freedoms:

Sections 8, 24(1), 24(2)

Criminal Code of Canada:

Sections 29(1), (2), (3)

Controlled Drugs and Substances Act:

Sections 11 (1) – (8), 12

Resources:

You can read the entire case at:

<http://canlii.org/en/ca/scc/doc/2010/2010scc31/2010scc31.html>

You can find The *Charter of Rights and Freedoms*, The *Criminal Code* and The *Controlled Drugs and Substances Act* at:

<http://laws.justice.gc.ca/eng/>

conducted, was reasonable.

The minority felt that the search was not reasonable, that the evidence should not be admitted and that Jason should be acquitted. The minority felt that there was no indication that there would be weapons or that evidence would be destroyed. The police had not looked into the character or background of the residents and the police should have had the warrant with them when they entered. They felt that a person has the highest expectation of privacy in his or her home.

Relevant Law:

Charter of Rights and Freedoms

8. Everyone has the right to be secure against unreasonable search or seizure.

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Criminal Code of Canada

Duty of person arresting

29. (1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.

Notice

(2) It is the duty of every one who arrests a person, whether with or without a warrant, to give notice to that person, where it is feasible to do so, of

(a) the process or warrant under which he makes the arrest; or

(b) the reason for the arrest.

Failure to comply

(3) Failure to comply with subsection (1) or (2) does not of itself deprive a person who executes a process or warrant, or a person who makes an arrest, or those who assist them, of protection from criminal responsibility.

Controlled Drugs and Substances Act

Information for search warrant

11. (1) A justice who, on *ex parte* application, is satisfied by information on oath that there are reasonable grounds to believe that

(a) a controlled substance or precursor in respect of which this Act has been contravened,

(b) any thing in which a controlled substance or precursor referred to in paragraph (a) is contained or concealed,

(c) offence-related property, or

(d) any thing that will afford evidence in respect of an offence under this Act or an offence, in whole or in part in relation to a contravention of this Act, under section 354 or 462.31 of the *Criminal Code*

is in a place may, at any time, issue a warrant authorizing a peace officer, at any time, to search the place for any such controlled substance, precursor, property or thing and to seize it.

Application of section 487.1 of the *Criminal Code*

(2) For the purposes of subsection (1), an information may be submitted by telephone or other means of telecommunication in accordance with section 487.1 of the *Criminal Code*, with such modifications as the circumstances require.

Execution in another province

(3) A justice may, where a place referred to in subsection (1) is in a province other than that in which the justice has jurisdiction, issue the warrant referred to in that subsection and the warrant may be executed in the other province after it has been endorsed by a justice having jurisdiction in that other province.

Effect of endorsement

(4) An endorsement that is made on a warrant as provided for in subsection (3) is sufficient authority to any peace officer to whom it was originally directed and to all peace officers within the jurisdiction of the justice by whom it is endorsed to execute the warrant and to deal with the things seized in accordance with the law.

Search of person and seizure

(5) Where a peace officer who executes a warrant issued under subsection (1) has reasonable grounds to believe that any person found in the place set out in the warrant has on their person any controlled substance, precursor, property or thing set out in the warrant, the peace officer may search the person for the controlled substance, precursor, property or thing and seize it.

Seizure of things not specified

(6) A peace officer who executes a warrant issued under subsection (1) may seize, in addition to the things mentioned in the warrant,

(a) any controlled substance or precursor in respect of which the peace officer believes on reasonable grounds that this Act has been contravened;

(b) any thing that the peace officer believes on reasonable grounds to contain or conceal a controlled substance or precursor referred to in paragraph (a);

(c) any thing that the peace officer believes on reasonable grounds is offence-related property; or

(d) any thing that the peace officer believes on reasonable grounds will afford evidence in respect of an offence under this Act.

Where warrant not necessary

(7) A peace officer may exercise any of the powers described in subsection (1), (5) or (6) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain one.

Seizure of additional things

(8) A peace officer who executes a warrant issued under subsection (1) or exercises powers under subsection (5) or (7) may seize, in addition to the things mentioned in the warrant and in subsection (6), 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.

Assistance and use of force

12. For the purpose of exercising any of the powers described in section 11, a peace officer may

(a) enlist such assistance as the officer deems necessary; and

(b) use as much force as is necessary in the circumstances.