

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Campbell, 2011 SCC 32, [2011] 2 S.C.R. 549 | **Date:** 20110623  **Docket:** 33916 |

**Between:**

**Norman Martin Campbell**

Appellant

and

**Her Majesty The Queen**

Respondent

- and -

**Criminal Lawyers’ Association (Ontario)**

Intervener

**Coram:** LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment:**  (paras. 1 to 17) | Charron J. (LeBel, Deschamps, Fish, Abella, Rothstein and Cromwell JJ. concurring) |

R. *v.* Campbell, 2011 SCC 32, [2011] 2 S.C.R. 549

Norman Martin Campbell *Appellant*

v.

Her Majesty The Queen *Respondent*

and

Criminal Lawyers’ Association (Ontario) *Intervener*

**Indexed as:** R. ***v.*** Campbell

2011 SCC 32

File No.: 33916.

2011: May 11; 2011: June 23.

Present: LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

on appeal from the court of appeal for ontario

*Constitutional law ― Charter of Rights ― Search and seizure ― Validity of search warrant ― Police obtaining warrant to search four‑bedroom townhouse operating as rooming house ― Accused renting room in townhouse ― Accused charged with possession of a sawed‑off shotgun and ammunition while under weapons prohibitions and while on probation with conditions not to possess weapons ― Whether there were sufficient grounds upon which the issuing justice of the peace could have authorized the search warrant ― Whether search of accused’s room breached accused’s rights under s. 8 of Canadian Charter of Rights and Freedoms ― If so, whether evidence ought to be excluded pursuant to s. 24(2) of Charter.*

*Criminal law ― Search warrant ― Validity ― Police obtaining warrant to search four‑bedroom townhouse operating as rooming house ― Accused renting room in townhouse ― Accused charged with possession of a sawed‑off shotgun and ammunition while under weapons prohibitions and while on probation with conditions not to possess weapons ― Whether there were sufficient grounds upon which the issuing justice of the peace could have authorized the search warrant.*

In the course of a murder investigation, the police obtained and executed a search warrant in respect of a four‑bedroom townhouse which operated as a rooming house. During the search, the police found a sawed‑off shotgun and ammunition in the room rented by the accused. The accused was charged with possession of a sawed‑off shotgun and ammunition while under weapons prohibitions and while on probation with conditions not to possess weapons. At trial, the search and seizure were found to be unconstitutional, the evidence was excluded and the accused was acquitted. On appeal by the Crown, the majority of the Court of Appeal allowed the appeal, set aside the acquittals and remitted the charges for trial. The accused appeals to this Court as of right.

*Held*: The appeal should be dismissed.

There were sufficient grounds upon which the issuing justice of the peace could have authorized the search warrant. The majority of the Court of Appeal rightly concluded that the search and seizure were constitutional and that the trial judge erred in excluding the evidence of the shotgun and ammunition. They followed the correct approach to reviewing the sufficiency of a warrant application.

In order to comply with s. 8 of the *Charter*, prior to conducting a search the police must provide reasonable and probable grounds, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of the search. The question for a reviewing court is not whether the reviewing court itself would have issued the warrant, but whether there was sufficient credible and reliable evidence to permit an issuing justice to authorize the warrant. In conducting this analysis, the reviewing court must exclude erroneous information from the Information to Obtain a Search Warrant (“ITO”) and may have reference to material properly received as “amplification” evidence. The accused bears the burden of demonstrating that the ITO is insufficient.

The accused’s expectation of privacy in his room within the townhouse is just as high as that of a resident of a single dwelling unit. In drafting ITOs proposing to search more than one unit within a multi‑unit dwelling, this principle should be reflected by clearly setting out reasonable and probable grounds for each unit to be searched. The drafting of this ITO left much to be desired in this respect. It also appears that the trial judge was not given some portions of the ITO until the very end of the hearing. Coupled with the lack of clarity in the ITO’s drafting, this may have accounted for the trial judge’s errors. Nonetheless, the majority of the Court of Appeal’s assessment of the sufficiency of the record was correct. The accused has failed to establish that there were insufficient grounds to issue a warrant to search his room.

**Cases Cited**

**Referred to:** *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253; *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145; *R. v. Araujo*, 2000 SCC 65, [2000] 2 S.C.R. 992; *Quebec (Attorney General) v. Laroche*, 2002 SCC 72, [2002] 3 S.C.R. 708.

**Statutes and Regulations Cited**

*Canadian Charter of Rights and Freedoms*, ss. 8, 24(2).

*Criminal Code*, R.S.C. 1985, c. C‑46, s. 487.

APPEAL from a judgment of the Ontario Court of Appeal (Doherty, Juriansz and Karakatsanis JJ.A.), 2010 ONCA 588, 270 O.A.C. 349, 261 C.C.C. (3d) 1, 216 C.R.R. (2d) 303, 78 C.R. (6th) 299, [2010] O.J. No. 3767 (QL), 2010 CarswellOnt 6691, setting aside a decision of Croll J., [2009] O.J. No. 4772 (QL), 2009 CarswellOnt 9499, and ordering a new trial. Appeal dismissed.

Dirk Derstine and Mariya Yakusheva, for the appellant.

Susan Ficek, for the respondent.

Frank Addario and Colleen Bauman, for the intervener.

The judgment of the Court was delivered by

Charron J. —

1. Overview

1. In the course of a murder investigation, the police obtained and executed a search warrant in respect of a four-bedroom townhouse which operated as a rooming house. During the search, the police found a sawed-off shotgun and ammunition in the room rented by the appellant, Norman Martin Campbell. Mr. Campbell was charged with possession of a sawed-off shotgun and ammunition while under weapons prohibitions and while on probation with conditions not to possess weapons.
2. At trial, the search and seizure were found to be unconstitutional, the evidence was excluded and Mr. Campbell was acquitted ([2009] O.J. No. 4772 (QL) (S.C.J.)). On appeal by the Crown, the Court of Appeal for Ontario was unanimous in finding that the trial judge misapprehended some of the evidence and failed to consider the entirety of the Information to Obtain a Search Warrant (“ITO”) (2010 ONCA 588, 270 O.A.C. 349). Given these errors, the usual deference could not be afforded to the trial judge’s findings and it fell to the Court of Appeal to determine whether there was a basis upon which the warrant could issue.
3. On a proper review of the evidence, Juriansz J.A. (Karakatsanis J.A. concurring) concluded that there were sufficient grounds upon which the issuing justice of the peace could have granted the search warrant. The majority therefore allowed the appeal, set aside the acquittals and remitted the charges for trial. Doherty J.A., dissenting, would have dismissed the appeal.
4. Mr. Campbell appeals to this Court as of right. The narrow question is whether there were sufficient grounds upon which the issuing justice of the peace could have authorized the search warrant. In my respectful view, there were sufficient grounds. Juriansz J.A. rightly concluded that the search and seizure were constitutional and that the trial judge erred in excluding the evidence of the shotgun and ammunition. I would dismiss the appeal, essentially for the reasons of Juriansz J.A.

2. The Proceedings Below

1. Juriansz J.A. has thoroughly reviewed the contents of the ITO and the additional evidence presented on the *Charter* application. For the purposes of this appeal, a brief summary of the evidence upon which the ITO was founded will suffice.
2. Mr. Campbell rented a furnished room in a townhouse located at 77-246 John Garland Boulevard, in Toronto. The townhouse operated as a rooming house. Mr. Campbell’s room was located in the basement, although he had to walk through the first floor to reach it. The three bedrooms on the townhouse’s second floor were rented to three unrelated tenants: Mr. Imona-Russel (who was ultimately convicted of the murder), Mr. Ryder and the deceased, Ms. Ashareh. Each tenant had a lock on his or her door. A shared bathroom was located on the second floor, and a shared kitchen, living room and dining room on the first floor. A separate kitchen and bathroom were also located in the basement.
3. On July 14, 2006, the partially clothed remains of a human body were discovered approximately 100 metres from the townhouse, inside a large black sports bag. Police investigation determined that the body was that of Ms. Ashareh, and that she had been stabbed to death. Other items found in garbage bags within the sports bag included a receipt for Chinese food delivered to the townhouse and a Western Union receipt with Mr. Imona-Russel’s name and address at the townhouse.
4. A police computer database search in relation to the townhouse produced several “hits”, including three outstanding charges against Mr. Imona-Russel for aggravated sexual assault. Fearing for the safety of any other occupants, the Emergency Task Force entered the townhouse on July 15, 2006, and removed Mr. Campbell, his girlfriend and Mr. Imona-Russel. In a statement to the police, Mr. Campbell explained that he moved into the townhouse in mid-June 2006 and that he had never been to the second floor. In his statement to the police, Mr. Imona-Russel indicated that Mr. Campbell had used black bags when he moved into the townhouse.
5. On the basis of a sworn ITO, the police applied for and obtained a warrant to search the townhouse. The ITO consisted of the Form 1 required by s. 487 of the *Criminal Code*, R.S.C. 1985, c. C-46, and a total of 10 appendixes. At his trial, Mr. Campbell took the position that the ITO was overly broad and insufficient as it related to his rented room. He therefore brought an application to exclude the evidence of the shotgun and ammunition on the basis that his right to be free from unreasonable search and seizure guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms* had been infringed.
6. The trial judge found four problems with the ITO. First, the affiant blended the criminal records and backgrounds of the three tenants where only Mr. Imona-Russel’s background was relevant to the offence. Second, the affiant overstated the tenants’ knowledge of each other’s comings and goings; at most the connection between the tenants would provide an opportunity to participate in the offence, which does not constitute reasonable and probable grounds. Third, the affiant’s suggestion of a possibility that the units within the townhouse were not properly secured was mere speculation. Fourth, the Chinese food receipt did not constitute reasonable and probable grounds to search Mr. Campbell’s room. The trial judge also found the drafting of the ITO “intentionally confusing and opaque” (para. 18). The trial judge concluded that Mr. Campbell’s s. 8 rights had been breached and she excluded the evidence under s. 24(2) of the *Charter*.
7. Writing for a majority of the Court of Appeal, Juriansz J.A. found that the trial judge erred by focusing on a brief portion of the ITO, failing to consider relevant evidence and misapprehending parts of the evidence. In particular, the trial judge disregarded relevant evidence when she referred to Mr. Campbell’s criminal record as “unrelated” and when she discounted the evidence of the black bags. Of the three tenants, only Mr. Campbell had been convicted of offences involving violence against women, and only Mr. Campbell had been linked to black bags. Juriansz J.A. also found that there was no evidence to support the trial judge’s conclusion that the drafting of the ITO was “intentionally confusing or opaque” (para. 30). To the extent that some of the statements in the summary section of the ITO were incorrect, they should have simply been excluded and the balance of the ITO assessed to determine whether there were sufficient grounds for the issuance of the search warrant. Given the errors committed by the trial judge, the usual deference could not be afforded to her findings and it fell to the court to determine whether there was a basis upon which the warrant could issue. Juriansz J.A. concluded that the cumulative effect of the compelling inference that the murder was committed in the townhouse and the evidence of Mr. Campbell’s criminal record, access and opportunity, and possession of black bags constituted reasonable grounds to issue the warrant to search Mr. Campbell’s room.
8. Doherty J.A., dissenting, agreed that the trial judge had misapprehended some of the evidence, failed to consider relevant evidence and was unreasonable in her characterization of the ITO as “intentionally confusing and opaque” (para. 94). He also agreed that these errors meant that the court should not defer to her findings in determining the validity of the warrant. On his review of the ITO, Doherty J.A. found “strong grounds” to believe that the deceased was murdered and that her murder occurred in or was otherwise connected to the townhouse (para. 70). He also found “strong grounds justifying a search of the rooms of the other two male tenants, the deceased’s room, and the common areas of the townhouse” (para. 71).
9. However, Doherty J.A. disagreed that the four areas of evidence relied upon by the majority constituted sufficient grounds to justify the issuance of the warrant with respect to Mr. Campbell’s room. In particular, he did not consider that the evidence of the black bags or contents of the garbage bags found with the deceased provided any support for the application for a warrant to search Mr. Campbell’s room. Weighing the remaining pieces of evidence of Mr. Campbell’s criminal record and his opportunity and access against a hypothetical analogy involving a 100-unit apartment building, Doherty J.A. concluded that these two facts did not alone establish a basis to authorize a search of Mr. Campbell’s room. Doherty J.A. would therefore have affirmed the trial judge’s finding that the search was unconstitutional and her ruling excluding the evidence.

3. Analysis

1. The relevant legal principles are not at issue in this appeal. Juriansz J.A. correctly followed the approach to reviewing the sufficiency of a warrant application recently reviewed by this Court in *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253. In order to comply with s. 8 of the *Charter*, prior to conducting a search the police must provide “reasonable and probable grounds, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of the search” (*Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, at p. 168). The question for a reviewing court is “not whether the reviewing court would itself have issued the warrant, but whether there was sufficient credible and reliable evidence” to permit an issuing justice to authorize the warrant (*Morelli*, at para. 40). In conducting this analysis, the reviewing court must exclude erroneous information from the ITO and may have reference to material properly received as “amplification” evidence (*R. v. Araujo*, 2000 SCC 65, [2000] 2 S.C.R. 992, at para. 58; *Morelli*, at para. 41). The accused bears the burden of demonstrating that the ITO is insufficient (*Quebec (Attorney General) v. Laroche*, 2002 SCC 72, [2002] 3 S.C.R. 708, at para. 68; *Morelli*, at para. 131).
2. It is important to stress, as Juriansz J.A. rightly acknowledged, that Mr. Campbell’s expectation of privacy in his room within the townhouse is just as high as that of a resident of a single dwelling unit. In drafting ITOs proposing to search more than one unit within a multi-unit dwelling, this principle should be reflected by clearly setting out reasonable and probable grounds for each unit to be searched. In this respect, the drafting of this ITO left much to be desired. In addition, it appears that the trial judge was not given some portions of the ITO until the very end of the hearing. This course of action, coupled with the lack of clarity in the ITO’s drafting, may well have accounted for the trial judge’s errors. Nonetheless, I agree with Juriansz J.A.’s assessment of the sufficiency of the record. In particular, Juriansz J.A. did not find the 100-unit apartment building analogy offered by Doherty J.A. helpful, explaining as follows:

The tenants in this townhouse, unlike tenants of a 100-unit building, had access not only to the deceased’s front door, but to her bedroom door, and to the shared bathroom, kitchen, dining room and living room. The tenants of a 100 unit apartment building can exit their bedroom and walk to their bathroom in complete privacy. That is not the case in this townhouse. The issuing justice could have viewed the tenants’ residences in this townhouse as connected and overlapping unlike those in a large apartment building. [para. 59]

1. I agree. In my respectful view, Mr. Campbell has ultimately failed to establish that there were insufficient grounds to issue a warrant to search his room. The search and seizure were constitutional.
2. I would dismiss the appeal.

*Appeal dismissed.*

Solicitors for the appellant:  Derstine, Penman, Toronto.

Solicitor for the respondent:  Attorney General of Ontario, Toronto.

Solicitors for the intervener:  Sack Goldblatt Mitchell, Toronto.