Court dismisses lawsuit based on “dynamic entry” to execute a search warrant

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On July 30, 2024, the Ontario Superior Court of Justice released its decision in *Campbell and Turasz v. Niagara Regional Police Service*, 2024 ONSC 4241. This decision, made after an approximate three-week trial, confirms that police in Ontario have broad discretion in how they choose to execute a valid search warrant. In addition, a claim for psychological damages will be defeated where the plaintiffs are unable to establish a persistent or permanent psychological injury based on all the evidence.

Background

The plaintiffs, a husband and wife, lived in a home with their adult son, who was suspected by police of drug dealing and firearm possession based on information received from a confidential informant. On Feb. 23, 2011, the Emergency Task Unit executed a search warrant at the home, seizing drugs and arresting the son. The parents were subject to investigative detention before being released without charge. The son ultimately pleaded guilty to criminal charges in relation to the drugs seized.

The plaintiffs did not challenge the validity of the search warrant itself but alleged in their civil claim that police had executed the warrant in an unreasonable manner, causing damage to the home and inflicting physical and psychological injuries on them. They sought $250,000 in damages for negligence, assault, and breach of *Charter* rights. The police service defended the action and issued a third-party claim against the plaintiff’s son, the target of the search warrant. The third-party claim was never adjudicated due to the defendants’ success in the Main Action.

The trial decision

The court rejected the plaintiffs’ claim on both liability and damages, finding that police had conducted the search in a lawful and reasonable manner, and that the plaintiffs had not demonstrated that they had suffered a compensable psychological injury in connection with the search. The court specifically dismissed the argument that officers should only have obtained a warrant to search the downstairs of the home, where the son lived, finding that the plaintiffs had exaggerated the division between the upstairs and downstairs areas to buttress their case.

The court reiterated that police have flexibility in choosing how to enforce a valid search warrant. In the present case, the police led evidence about their concerns that the target may react violently to someone entering his home due to a prior break-in at the residence. Further, the dynamic entry technique was explained to the court, and more importantly, why it was necessary in the circumstances. Further, it was explained that a dynamic entry was necessary for officer safety due to the possible presence of a firearm, and to prevent the destruction of evidence, *i.e.* the drugs. The court ultimately found this tactic reasonable in the circumstances and noted that the plaintiffs had elected not call an expert on the standard of care.

With respect to damages, the court preferred the evidence of the officers over that of the plaintiff father, finding that the officers had not placed a rifle to the father's head or threatened to shoot him, as he claimed. The court went on to prefer the evidence of the defendants' psychiatric expert over that of the plaintiffs, holding that the plaintiffs had not developed post-traumatic stress disorder because of the incident. The court relied on the fact that the plaintiffs' expert had not been provided with all of the relevant medical records, and on its own observations of the plaintiffs' demeanour on the witness stand.

Commentary

This decision illustrates the hurdles that plaintiffs will face when attempting to argue that a lawful search warrant has been executed in an unlawful or unreasonable manner. Police are entitled to use tactics such as dynamic entry to reduce the risk to office safety when there is a reasonable suspicion of such a risk existing, even if the source of the risk, *e.g.* the presence of firearms, does not ultimately materialize.

By

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