

CANADA / JUDGMENT

R. v. Seangio

2026 ONCA 172

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Seangio Collection Decisions of the Court of Appeal Date 2026-03-11 Neutral citation 2026 ONCA 172 Docket numbers COA-23-CR-0994 Judges van Rensburg, Katherine; Paciocco, David M.; Wilson, Darla A. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Seangio, 2026 ONCA 172[1] DATE: 20260311 DOCKET: COA-23-CR-0994 van Rensburg, Paciocco and Wilson JJ.A. BETWEEN His Majesty the King Respondent and Andrew James Seangio Appellant Yoav Niv, for the appellant Jeremy Tatum, for the respondent Heard: September 25, 2025 On appeal from the conviction entered by Justice Norman D. Boxall of the Ontario Court of Justice, on July 31, 2023 Wilson J.A.: I. Overview [1] The appellant was convicted of 33 counts of voyeurism involving eight complainants. The voyeurism charges turned on the contents of a USB that was seized from a safe located in the appellant's condominium. Before trial, the appellant brought an application challenging the warrant which authorized the seizure of the USB. The application judge, Doody J., dismissed the application, concluding that the warrant was validly issued and that the appellant's s. 8 rights under the Canadian Charter of Rights and Freedoms were thus not infringed. The appellant was subsequently convicted of voyeurism and the evidence contained on the USB was relied on by the trial judge. The appellant appeals his conviction, arguing that the application judge erred in dismissing his application. For the reasons that follow, I am not persuaded the application judge made a reversible error, and would dismiss the appeal. II. Background [2] In early 2019, the appellant, an RCMP officer, was the subject of an investigation by the Vancouver Police Department for his involvement in 18 indecent acts committed in the vicinity of 2 private schools for girls in Vancouver. The acts involved exposing himself to girls and women on the street and masturbating while in his SUV. Statements from the victims were secured in which several of the victims reported a licence plate number which matched the licence registered to the appellant. Additionally, video footage obtained indicated that the vehicle involved was a black SUV with a chrome-coloured front grill. This description matched that of a car the appellant was seen driving. However, when the police eventually located the appellant's vehicle, it was a black SUV with a black front grill.

- [3] The appellant was arrested on March 12, 2019 and interviewed by the police. During the interview, he admitted that he was aware of a news report of the indecent acts and was concerned that the person described in the report matched his own appearance, particularly given that he had been in the vicinity of the indecent acts. He also admitted that

he had recently repainted the front grill of his SUV. The police interviewed the appellant's then-girlfriend on the same day. She told the police that she believed the appellant had purchased black spray paint from a Canadian Tire store two days after the news report was published. The police suspected that the appellant had modified his vehicle, following the news report, to evade detection.

- [4] The police sought and obtained three warrants to search the appellant's residence and his belongings. The first warrant, which was issued on March 12, 2019, authorized the police to search the appellant's residence for, among other things, "[a]ny digital storage devices" (the "Residence Warrant"). The second warrant, which was issued on March 18, 2019, authorized the police to search two safes seized from the appellant's residence (the "Safe Warrant"). The Safe Warrant also authorized the police to search for "[a]ny digital storage devices". The third warrant, which was issued on March 20, 2019, authorized the police to search a USB seized from one of the safes (the "USB Warrant").
- [5] Upon execution of the USB Warrant, the police found a number of video recordings that formed the basis for the voyeurism charges. The videos were unrelated to the indecent acts.
- [6] Before trial on the voyeurism charges, the appellant brought an application requesting that the evidence on the USB be excluded under s. 24(2) of the Charter on the basis that the Safe Warrant was invalid and that seizure of the USB was thus a breach of his s. 8 rights. The application judge found that an issuing justice could reasonably believe that a digital storage device would be found in the safes. He further concluded that such a device could reasonably be believed to contain evidence related to the offences under investigation. A digital storage device could contain research that the appellant conducted in relation to either the offences or modifications to the appearance of his vehicle. Receipts for purchases related to those modifications could also reasonably be expected to be found on the device. He thus concluded that there was a basis on which the warrant could have been issued and dismissed the application.
- [7] At trial, the appellant was convicted of 33 counts of voyeurism. III. Analysis i. Positions of the Parties a. The appellant
- [8] As below, the appellant only challenges the validity of the Safe Warrant. He argues that the police lacked reasonable and probable grounds to believe that there was a digital storage device in the safes and that there would be anything on such a device connected to the offences under investigation. The appellant submits that the application judge erred in his analysis of the sufficiency of the information to obtain ("ITO") the Safe Warrant by engaging in speculative and impermissible propensity reasoning. All that the ITO disclosed, he submits, was suspicion and hypothesis, which failed to meet the requisite threshold. He asks that this court find that the seizure of the USB was a breach of his s. 8 rights and exclude the evidence under s. 24(2) of the Charter.

b. The respondent

- [9] The respondent argues that the application judge made no error in concluding that there was sufficient credible and reliable evidence on the basis of which the warrant could have issued. The appellant was aware that the police were investigating the indecent acts and was concerned that he matched the description of the suspect; he admitted that he had been in the vicinity of the offences; he acknowledged to recently changing the appearance of his vehicle; and investigators had already found several other digital storage devices when searching his residence. This was reliable evidence on which the issuing justice could reasonably believe that a digital storage device would be found in the safes and that such a device would afford evidence of the offences being investigated. ii. Legal Framework [10] In order to authorize a warrant, the issuing justice must be satisfied that there are “reasonable grounds to believe” that there is something in a building, receptacle or place that will afford evidence with respect to the commission of an offence: Criminal Code, R.S.C., 1985, c. C-46, s. 487(1)(b). Compliance with s. 8 of the Charter demands that the police provide reasonable and probable grounds prior to conducting the search, 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: *R. v. Campbell*, 2011 SCC 32, [2011] 2 S.C.R. 549, at para. 14.
- [11] However, as the Supreme Court has explained, investigators must be permitted to find as much relevant evidence as possible concerning events that may establish criminal responsibility: *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, at para. 22. As a result, s. 487(1) is construed in a broad fashion.
- [12] “Reasonable grounds to believe” as used in s. 487(1)(b) does not require proof on a balance of probabilities. It only demands credibly-based probability: *R. v. Sadikov*, 2014 ONCA 72, 305 C.C.C. (3d) 421, at para. 81. Moreover, the issuing justice makes their decision from the evidence included in the ITO as a whole, approaching the assessment on a common sense, practical and non-technical basis: *Sadikov*, at para. 82.
- [13] On first level review, the question for a reviewing judge is not whether they would themselves have issued the warrant, but whether there was sufficient credible and reliable evidence to permit an issuing justice to authorize the warrant: *Campbell*, at para. 14. As this court put it in *Sadikov*, “the test is whether there was reliable evidence that might reasonably be believed on the basis of which the warrant could – not would – have issued.”: at para. 84. Warrant review also begins with a presumption of validity; the applicant bears the onus of demonstrating invalidity: *Sadikov*, at para. 83.
- [14] On appeal, deference is owed to the findings of the reviewing judge, their assessment of the ITO, and their disposition of the application. Absent legal error, a misapprehension of evidence, or a failure to consider relevant evidence, an appellate court cannot interfere: *Sadikov*, at para. 89. This is a highly deferential standard. In effect, it involves two layers of deference. The reviewing judge defers to the issuing justice by asking simply whether there was a basis on which the warrant could have been issued. Appellate courts then defer to the reviewing judge’s answer to that question absent an error of law, a misapprehension of evidence, or a failure to consider relevant evidence. iii. The issues on this appeal [15] As

noted, the task for the application judge was to examine the ITO and decide whether, on the basis of the information disclosed, the issuing justice could have issued the warrant. That is what the application judge did; and his reasons for finding that the ITO provided reliable evidence on which the issuing justice could reasonably believe that a digital storage device would be found in the safes and that such storage device would afford evidence of the indecent act offences reveal no reversible error.

- [16] The appellant does not argue that the application judge misapprehended or failed to consider relevant evidence. Nor does he assert that the application judge set out the wrong legal test. His appeal rests solely on a complaint that the application judge misapplied the correct legal test by engaging in speculative and impermissible propensity reasoning. Success on this argument depends on the identification of an extricable legal error. This court cannot interfere solely because it might have reached a different conclusion had it been in the position of the reviewing judge.
- [17] I am satisfied that the application judge did not make any extricable legal error in his application of the test. The application judge's findings were not speculative or the product of overbroad generalizations that would give rise to legal error. Common sense and human experience are a necessary element of judicial reasoning. This is no less true in the warrant review context: *Sadikov*, at para. 82; *R. v. Kalonji*, 2022 ONCA 415, at paras. 25-26, leave to appeal refused [2022] S.C.C.A. No. 284. A reviewing judge only errs when their conclusions become ungrounded from the evidence and therefore speculative or based on stereotype: *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at paras. 73, 79.
- [18] In this case, the application judge's findings were rooted in the evidence disclosed in the ITO. By the time of the authorization of the Safe Warrant, the police had already searched the appellant's residence and had seized, among other things, several digital storage devices. Additionally, the appellant had informed the police that he had seen a news report of the indecent acts and had been concerned that the description of the offender matched his own appearance; he admitted that he had repainted the front grill of his car; and his then-girlfriend told the police that she believed the appellant had purchased black spray paint from a Canadian Tire store. All of this was disclosed in the ITO and referenced by the application judge.
- [19] The application judge found, on the basis of this evidence, that there were reasonable grounds to conclude that a digital storage device might be found in the safes. He rejected the appellant's argument that the presence of digital storage devices outside the safes rendered the presence of such a device in a safe speculative, finding that it would be reasonable to conclude it to be probable that a digital storage device containing important information would be kept in a safe. The presence of digital storage devices outside the safes did not detract from the probability of a digital storage device being found in one of the safes.

- [20] The application judge further found, again on the basis of the evidence disclosed in the ITO, that there were probable grounds to conclude that a digital storage device found in the safes would afford evidence related to the indecent act offences. Specifically, he found that there were reasonable grounds to conclude that evidence of research related to the offences or modifications of the appellant's car, and/or receipts related to purchases made in relation to such modifications would be found on a digital storage device located in the safes. He noted that, as digital storage devices are often used to back up computers and can be used to store important documents such as receipts, this evidence could reasonably be expected to be found on such a device. The application judge's findings were open to him on the record. I see no basis to disturb them on appeal.
- [21] It is worth repeating that the police did not need to demonstrate proof on a balance of probabilities that evidence relevant to the offences would be found in the place searched. All that the police were required to show was that there was a credibly-based probability that evidence would be located. The issuing justice was satisfied that this standard was met and the application judge found, as he was entitled to do, that the issuing justice's conclusion was reasonable. There is no basis for this court to interfere. IV. Disposition [22] The appeal is dismissed. Released: March 11, 2026 "K.M.v.R." "D.A. Wilson J.A." "I agree. K. van Rensburg J.A." "I agree. David M. Paciocco J.A."
- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.

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