

PARTIES: THE QUEEN
v
SIANG PIN FOO
TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY
JURISDICTION: TERRITORY JURISDICTION
FILE NO: 113/96 (9512728)
DELIVERED: 23 July 1998
VOIR DIRE DATES: 21 April – 20 May 1997
JUDGMENT OF: THOMAS J

CATCHWORDS:

Criminal law – evidence – judicial discretion to admit or exclude evidence – search warrant – evidence admissible

Crimes Act 1914 (Cth) s 3H, 3Q and 23N.

REPRESENTATION:

Counsel:

Crown: E. Fullerton and S. Sievers
Defendant: J. Tippett

Solicitors:

Crown: Australian Government Solicitor
Defendant: NTLAC

Judgment category classification: C
Judgment ID Number: tho98017
Number of pages: 7

tho98014
IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 113/96 (9512728)

BETWEEN:

THE QUEEN

AND:

SIANG PIN FOO

CORAM: THOMAS J

REASONS FOR RULING

(Delivered 23 July 1998)

On 16 May 1997 I ruled that evidence obtained from the search warrant executed on 1 July 1995 was admissible on the trial of Mr Foo. I stated I would publish reasons for my ruling if required. I now publish those reasons.

Mr Tippet, as counsel on behalf of the Defence, submitted that evidence obtained at the time of the search conducted at premises at Room 235 at the Don Hotel on 1 July 1995 is not admissible on the trial of Mr Foo.

The issue and execution of search warrants are governed by the provisions set out under Division 2 of Part 1AA of the *Crimes Act* 1914.

There is no challenge to the issue of the search warrant nor is there any submission that Sergeant Martin was without lawful authority to enter Room 235 of the Don Hotel and with other officers to search for and seize items which satisfied the preconditions contained within the warrant.

Section 3H of the *Crimes Act* requires that the executing officer or a constable assisting make available to the occupier a copy of the warrant.

Section 3H provides as follows:

“(1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or a constable assisting must make available to that person a copy of the warrant.

(2) If a warrant in relation to a person is being executed, the executing officer or a constable assisting must make available to that person a copy of the warrant.

(3) If a person is searched under a warrant in relation to premises, the executing officer or a constable assisting must show the person a copy of the warrant.

(4) The executing officer must identify himself or herself to the person at the premises or the person being searched, as the case may be.

(5) The copy of the warrant referred to in subsections (1) and (2) need not include the signature of the issuing officer or the seal of the relevant court.”

I am satisfied on the evidence that Sergeant Martin did in fact make a copy of the search warrant available to Mr Foo in accordance with s3H of the *Crimes Act*.

Ms Drennan gave evidence as follows at t/p 299:

“MS FULLERTON: Agent Drennan, you gave evidence before the cross-examination on the voir dire, of being present when Detective Senior Constable Martin had a conversation with Mr Foo after entry to the hotel room was gained. Do you recall that?---Yes, I do.

Will you tell us please what was said in your presence during the course of that exchange?---Detective Senior Constable Martin indicated to Mr Foo that he was from the police.

Yes, and if you just do your best to tell us what was said in the course of the exchange?---Mr Foo said, ‘What?’ Detective Senior Constable Martin said, ‘We are from the police’ and showed his warrant badge. He then explained to Mr Foo that he had a federal search warrant in his possession and he asked Mr Foo if Mr Foo could read English. He then handed him the warrant and Mr Foo appeared to read the warrant.

At the - you saw Mr Foo with the warrant in his physical possession? --
-Yes.

Yes, and after he had concluded an apparent reading of the document given to him, what then happened?---Detective Senior Constable Martin asked Mr Foo whether or not he understood the warrant and he said that - or, he implied that he did because he said, ‘You can search everything.’”

In addition Ms Drennan gives evidence at t/p 563 that during this initial conversation when asked by Sergeant Martin if he read English, Mr Foo replied, “Yes.” Sergeant Martin gave evidence at t/p 653 that he showed the warrant to Mr Foo and read through the warrant explaining it was a Federal search warrant which authorised police to carry out a search of his room and had been signed by a magistrate. Sergeant Martin stated at t/p 654 that he didn’t actually read the warrant to Mr Foo; he went through the whole warrant and broke it down for him in conversation. Sergeant Martin stated that he was not sure if Mr Foo was able to read and this was because possibly Mr Foo had told him he couldn’t read English. Sergeant Martin

stated he took between 5-10 minutes to go through the warrant with Mr Foo and that he referred to five pages of the warrant. The original warrant was tendered and marked Exhibit P13. This document is five pages. There is no evidence that the document titled "Search of Premises: Rights of the Occupier" was given to Mr Foo or drawn to his attention. This document was tendered and marked Exhibit P16. This document contains a recital of certain provisions of the *Crimes Act* relevant to the rights of the person in occupation of the premises being searched. In the circumstances of this search I do not consider that the Crown's lack of proof that this document was attached to the warrant is a reason to exclude evidence obtained during the search. In the exercise of my discretion I would allow evidence obtained from the search on the trial of Mr Foo irrespective of whether the document being Exhibit P16 was attached to the warrant (Exhibit P13) or was read to Mr Foo. This is for the following reason. Mr Foo remained in the room at all times during the search and was in a position to observe the search being conducted (*Crimes Act* s3P). I am satisfied Mr Foo was informed and understood that police had a search warrant to search his room in relation to an allegation regarding the importation of heroin into Australia. Mr Foo was made fully aware of the substance of the charge against him and what it was police proposed to do in respect of the search of his room. There was no breach of his rights during the course of the search such as to lead me to conclude that evidence obtained from the search should be inadmissible on the trial of Mr Foo.

The evidence of Sergeant Martin differs to that given by Detective Drennan as to how the contents of the search warrants were made available to Mr Foo. However, such differences do not lead me to reject the evidence of one or the other but rather to conclude that each have recalled different aspects of what occurred. After the first few minutes, Detective Drennan was involved in searching a dresser. It was Sergeant Martin who actually spoke with Mr Foo and I accept spoke with Mr Foo in more detail than the notes made at the time by Detective Drennan would indicate.

Police failed to comply with s3Q of the *Crimes Act* which provides that police should provide a receipt for all things seized under the warrant. However, the failure to provide such receipt does not mean the evidence was illegally or improperly obtained, or that the failure will be productive of unfairness to the accused at his trial.

I accept the evidence of Sergeant Martin that at the conclusion of the search he again spoke with Mr Foo. This conversation was recorded on a hand held tape recorder. Sergeant Martin advised Mr Foo that he was under arrest for Federal offences in relation to “knowingly concern with the importation of heroin” (t/p 631). The Crown does not seek to tender details of this conversation on the trial of Mr Foo and consequently there is no need for me to rule on its admissibility.

It is the defence submission that pursuant to the provisions of s23N of the *Crimes Act*, the police were required to defer the investigation, which included the search of the room, until an interpreter arrived.

I do not accept this submission. There was no statutory obligation to have an interpreter in attendance at the execution of the search warrant. The obligations imposed by s23N do not apply as the accused was not at that time being interviewed in respect of the offence. I accept the evidence of Sergeant Taylor that because the arrests of a number of persons suspected of being involved in this offence were carried out at short notice, at the same time and in the early hours of the morning, it was not practical to arrange to have an interpreter attend at the time of the execution of the search warrant. More importantly, Sergeant Taylor was concerned that there be no breach of security and made no prior attempts to have an interpreter present at the time of the execution of the search warrant. I accept this evidence.

I am satisfied that the substance of the search warrant was explained to Mr Foo, the reason for police being in his room and their purpose. In his record of interview (p11 and p14) the accused acknowledged that the warrant was read by and explained to him. I am satisfied Mr Foo understood the police explanation. I am satisfied that there was no unfairness to the accused as a consequence of the execution of the search warrant and that practical consideration militated against having an interpreter present at the time of the execution of the search warrant.

For these reasons I ruled that the evidence obtained from the search warrant was admissible on the trial of Mr Foo.