

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. D.D., 2026 ONCA 415

DATE: 20260610

DOCKET: M57086 (COA-26-CR-0590)

Copeland, Gomery and Osborne JJ.A.

BETWEEN

His Majesty the King

Respondent/Responding Party

and

D.D.

Appellant/Moving Party

Mark C. Halfyard and Chloe Boubalos, for the appellant/moving party

Matthew Asma, for the respondent/responding party

Heard and rendered orally: June 8, 2026

REASONS FOR DECISION

[1] The appellant seeks an order to prevent the Toronto Police Service from continuing their examination of electronic devices seized pursuant to three search warrants, pending an appeal of the dismissal of an application for *certiorari* which sought to quash the warrants as facially invalid.

[2] Assuming, without deciding, that the court has jurisdiction to grant such an order through the combination of s. 683(3) of the *Criminal Code*, R.S.C. 1985,

c. C-46, and s. 134(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, we are of the view that it is not appropriate to make the order requested.

[3] We apply the usual legal framework for stays pending appeal.

[4] Although the merits will ultimately be decided by a panel of the court on the appeal proper, we are not persuaded that there is a serious issue in relation to the merits of the appeal. *Certiorari* is a discretionary remedy. There is no obvious error in the application judge's decision to decline to exercise his discretion to make an order of *certiorari*. The jurisprudence is clear that relief in the nature of *certiorari* to determine the constitutional validity of search warrants is exceptional in the context of an ongoing police investigation before charges are laid.

[5] Further, apart from the discretionary issue, the appellant's argument that the informations to obtain the search warrants did not provide reasonable and probable grounds appears weak. The police are not required to exclude every alternate inference in order to meet the reasonable and probable grounds threshold. Nor do we see merit to the appellant's argument that there were not reasonable and probable grounds to believe that a search for electronic devices in his home would afford evidence of an offence.

[6] Turning to irreparable harm, although we accept that there is an impact on the appellant's privacy interests from the continuing police examination of the devices pursuant to the warrants, it is far from the type of impact that would render

his appeal moot. If the appellant is successful on appeal, this court retains the ability to grant a remedy in relation to the warrants and the fruits of their execution. Further, in the event that criminal charges are laid, the appellant retains the ability to bring a *Charter* challenge to the admissibility of the fruits of the searches at trial.

[7] Weighing the lack of apparent merit of the grounds of appeal, the limited impact of allowing the police examination of the electronic devices to continue, and the public interest in allowing the investigation to continue based on the presumptively valid warrants, the balance of convenience does not favour granting an order in the nature of a stay.

[8] The motion is dismissed. The matter is referred for case management in order to seek directions to expedite perfection of the appeal and an early hearing date.

“J. Copeland J.A.”
“S. Gomery J.A.”
“P.J. Osborne J.A.”