

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
HER MAJESTY THE QUEEN	- and -	SHAWN RAYMOND HEWLIN
Appellant		Respondent
C.A.C. No. 164712	Halifax	ROSCOE, J.A.

[Cite as: R. v. Hewlin, 2001 NSCA 16]

APPEAL HEARD: January 18, 2001

JUDGMENT DELIVERED: January 18, 2001

WRITTEN RELEASE OF ORAL: January 25, 2001

SUBJECT: **Criminal Law, Charter s. 8, Unreasonable Search**

SUMMARY: The appellant was subjected to a pat down search after being detained for investigation of offences pursuant to the **Motor Vehicle Act**. During the search, the respondent tossed away something he had removed from his pocket. The item later recovered was a vial containing L.S.D. The trial judge found the search was unreasonable. The Crown appealed.

ISSUE: Did the trial judge err in concluding that the search was unreasonable?

RESULT: Appeal allowed. Matter remitted to the Provincial Court for entering of conviction and the imposition of sentence. The search of the respondent was reasonable. It was authorized by a common law power of search incident to a lawful detention or arrest. This law has been found to be reasonable, and the search was reasonable in the manner in which it was carried out. The trial judge erred in finding that the police officer needed independent grounds to perform a search incident to detention. Relied on: **R. v. Boyd** (1989), 89 N.S.R. (2d) 173 (A.D.); **Cloutier v. Langlois et al.** (1990), 53 C.C.C. (3d) 257 (S.C.C.); **R. v. Stillman** (1997), 113 C.C.C. (3d) 321 (S.C.C.); and, **R. v. Lake** (1996), 113 C.C.C. (3d) 208 (Sask.C.A.).

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