

IN THE YOUTH JUSTICE COURT OF NOVA SCOTIA

Citation: R. v. F. (K.C.), 2004 NSPC 70

Date: 20041112
Docket: 1434378
Registry: Halifax

Between:

Her Majesty the Queen

v.

F. (K.C.)

LIBRARY HEADING

Restriction on Publication: s. 110 Youth Criminal Justice Act

Judge: The Honourable Judge Alan T. Tufts

Heard: Sept. 22, 2004; Sept. 28, 2004 in Halifax, Nova Scotia

Written release date: May 17, 2005

Subject: s. 5(2) Controlled Drugs and Substances Act
s. 8 Charter of Rights and Freedoms
s. 24(2) Charter of Rights and Freedoms

Summary: Investigating officer received information from a confidential source regarding certain activities at a subject apartment. Later the same day a search warrant was obtained and the officer, together with six other officers, attended the apartment and effected a "hard entry" - that is they did not knock or announce their presence before smashing the door with a steel ram, although the police had a key to the apartment. The young person was not in the apartment.

Another young person who resided in the apartment was present. That young person was searched together with the entire apartment. Marihuana and other drug paraphernalia was found. The young person was subsequently arrested outside the apartment. He and the persons with him were searched.

A *voir dire* was conducted to determine the admissibility of certain evidence that was seized from the apartment.

Issue:

Whether the grounds for the search warrant are deficient and the search warrant should not have been granted and hence the search is warrantless, unreasonable and violated the young person's s. 8 Charter rights;

Whether the manner in which the search was conducted was unreasonable; that is, the hard entry was not necessary, the search therefore was unreasonable and violated the young person's s. 8 Charter rights;

If the young person's s. 8 Charter rights were violated, whether the items seized should be excluded from evidence.

Result:

The search violated the young person's s. 8 **Charter** rights and the evidence found is excluded. The "hard entry" search was found to be unreasonable. Although not necessary it was also found that the search warrant did not establish the required reasonable and probable grounds to search. S. 24(2) consideration outlined in *R. v. Bushay* applied.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***