

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. MacDougall, 2010 NSPC 55

Date: September 20, 2010

Docket #: 1998227/28 – 1998231-33

Registry: Sydney

Between:

The Queen

v.

Eric MacDougall

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Judge: A.P. Ross

Decision: 20 September 2010

Summary

The accused, who is charged with impaired driving causing death, makes application to the court for a ruling that the results of blood analysis are inadmissible. Two samples of blood were obtained by police from the accused at hospital pursuant to a s. 254 blood demand. A further blood sample was ordered by a doctor and analyzed for, among other things, the presence of intoxicants. Police subsequently obtained a search warrant to obtain the results of analysis on this additional sample.

Issues

Defense contends that the police demand for blood samples did not meet the “practicability” requirement in the Criminal Code, was made without reasonable and probable grounds, and was made to an illegally detained accused not fully

apprised of the extent of his jeopardy, It argues that the results ought to be excluded from evidence at the pending trial. It also argues that there were insufficient grounds to issue the search warrant for the third hospital sample, that the process by which the warrant was issued was deficient, and that the doctor breached a duty of confidentiality to the accused and acted, in effect, as an agent of the police in helping them procure this evidence.

Result

The applications are denied. The evidence fails to show any deficiencies in the police blood demand on the basis of the substantive law requirements in s.254(3). Neither does the evidence demonstrate any breach of the accused's right to be free from unreasonable search and seizure, either with respect to the police samples or the hospital sample. No other Charter violations are proven, nor any abuse or defect in the process by which the warrant was issued. In the circumstances the results of the analyses, even had a breach occurred, would not be excluded from evidence pursuant to s.24(2) of the Charter.

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