

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Bond, 2006 NSPC 17

Date: 20060320

Docket: 1392918, 1392919

Registry: Kentville

Between:

Her Majesty the Queen

v.

Frederick Francis Bond

LIBRARY HEADING

Judge: The Honourable Judge Alan T. Tufts

Heard: March 11, 2005; June 15, 2005; Jan. 27, 2006, at Windsor, Nova Scotia

Written release date: April 11 , 2006

Subject: **s. 254(5) and s. 253(a) Criminal Code
Approved Screening Device Demand**

Summary: A vehicle was observed on the 101 Highway at 2 a.m. The defendant was placed in the police car and based on the officer's observations of apparent impairment he was read the approved screening device demand. At this time the constable thought the approved screening device was in the trunk of the police car but found that it was not. The defendant was then given "rights to counsel" (but no evidence as to what precisely was said) and police warning.

Efforts were then made to obtain an approved screening device and one was brought to the scene at 2:22 a.m. This device was described as an Alcotest[®] 7410 Draeger. After four failed attempts to blow into the device, the defendant was charged with refusal .

Issue: **Whether the device used was an "approved screening**

device” and whether the demand to provide samples was made “forthwith”. Application of R. v. Woods, 2005 SCC 42.

Result:

Satisfied that the device used as described by the officer was an approved screening device under the Criminal Code.

The thirteen minute delay between the demand the provide the sample and the test resulted in the demand not being made “forthwith”. Accordingly the demand was not legal under s. 254(4) of the Criminal Code and the defendant was found not guilty of the charge under s. 254(4). Charter s. 9 and 10(b) considered.

With regard to the s. 253(a) charge, there was insufficient evidence of impairment to establish beyond a reasonable doubt the defendant's inability to operate a motor vehicle and the defendant was found not guilty of that offence as well.

NOTE: With regard to the CDSA 4(1) charge referred to in the previous decision on the Voir Dire as contained in 2005NSPC16 the defendant was found guilty and subsequently sentenced on that charge.

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