

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Peel, 2003 NSPC 66

Date: 20031001

Docket: 1182149, 1182150

Registry: Kentville

Between:

Her Majesty the Queen

v.

Douglas Colin Peel

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Judge: The Honourable Judge Alan T. Tufts

Heard: May 15, 2003 at Kentville, Nova Scotia

Oral Decision: October 1, 2003

Subject: 253(b) and 253(a) Criminal Code charges;
Arbitrary detention, articulable cause
S.9 Charter of Rights;

Summary: The events in question took place May 12, 2002 near Aylesford, Kings County, Nova Scotia at approximately 4:30 a.m. The defendant was followed into a private driveway by the RCMP. There was nothing peculiar about the defendant's vehicle or its movements. There was no evidence the police officer involved was conducting any particular investigation or patrolling for possible motor vehicle violations. The officer never gave any evidence to explain why he wanted to follow this particular motorist.

The officer testified he thought the defendant's actions in turning into a driveway before a stop sign, exiting the vehicle and “half-jogging” across the yard indicated the defendant was trying to avoid the officer.

The defendant did stop when directed and the constable noted some signs that the defendant had been consuming alcohol. The defendant was subsequently dealt with as a suspected impaired driver and gave breath samples pursuant to a breath demand.

Issue: The primary issue in this proceeding concerns the police action in stopping the defendant; whether his s. 9 rights were violated and whether the evidence obtained should be excluded. Also at issue is whether there is sufficient evidence to prove beyond a reasonable doubt that the defendant's ability to drive was impaired by alcohol.

Result: The officer had no cause or reason to pursue the defendant's vehicle and when he stopped the defendant on the lawn it was without cause or reason. The officer had no reasonable grounds or suspicion to do so. There was no articulable cause. The defendant's s. 9 rights against arbitrary detention were breached. The subsequent breath samples were acquired as a result of this violation. The breath samples here were conscripted evidence and accordingly this affects the issue of trial fairness. The breath samples are accordingly excluded and the defendant acquitted. The defendant was also acquitted on the charge of impaired driving as the evidence did not support his guilt beyond a reasonable doubt.

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