

CASE NO.

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IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

HER MAJESTY THE QUEEN

against

**IAN BAGNALD
JEFFREY STEVEN KEDDY
GRANT WILFRED MacDONALD**

Justice C. Richard Coughlan

Halifax, Nova Scotia

C.R. No. 173312

[Cite as: R. v. Bagnald , 2001 NSSC 182]

LIBRARY HEADING

HEARD: At Halifax, Nova Scotia, before the Honourable Justice C. Richard Coughlan, on October 31st, 2001

DECISION: December 10th, 2001

SUBJECT: Criminal Law - Special Powers - Power of Search - Power of Search, Evidence Obtained, Admissibility Of

SUMMARY: The police officers responded to a complaint. The complainant told the officers of the use of marijuana and traffic coming and going to an apartment. The police determined to identify the residents of the apartment. The police rang the doorbell and asked to speak to the residents.

Uninvited, the officers entered into what they had been told was the laundry area of the building to an interior door. At the interior door one officer smelled a strong smell of marijuana and saw smoke in the air. While holding a plastic bag with something in it, one of the accused was observed making a quick movement after seeing the police. The officer thought evidence was being destroyed. The officer entered the interior door, followed the person and arrested him. The second officer entered the apartment and arrested the other persons present. The accused were searched and items around the room, including weapons, were gathered. The accused were taken to the police station and the apartment was searched. No search warrant was obtained.

ISSUE: Did the accused have standing to seek relief pursuant to s. 24(2) of the Charter of Rights and Freedoms? Was a search conducted? Was the search reasonable? If the search was unreasonable, should the evidence obtained be excluded?

RESULT: The residents of the apartment had a reasonable expectation of privacy and therefore standing to seek relief, pursuant to s. 24(2) of the Charter; but a person present with an unknown connection to the apartment did not have a reasonable expectation of privacy and therefore did not have standing.

The police had authority to approach the door and knock, but when they entered the area between the exterior and interior door without invitation they conducted a search. The search was not authorized by law and therefore unreasonable.

In determining whether the evidence should be excluded, the following factors were considered. The evidence in question was real evidence and would not render the trial fair. The initial violation of s. 8 of the Charter was not particularly grave. The police thought the area between the exterior and interior doors was the laundry room for the building. The officer thought evidence was about to be destroyed. Also the search following the arrest was not a grave violation. However, the search after the initial search and the search after the arrest of persons present is a serious violation. There was no urgency or need to prevent a loss of evidence. Even though police were in attendance at the apartment for approximately three hours, no attempt to obtain a search warrant was made.

Considering the facts of the case, it would bring the administration of justice into disrepute to exclude the items seized at the time of the initial arrests and at the time the other persons present were arrested and searched; and, likewise, it would bring the administration of justice into disrepute to admit into evidence the items seized after the accused were removed from the apartment.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
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