

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Peers 2006 NSSC 389

Date: 20061204

Docket: CR.Am. 269088

Registry: Amherst

Between:

Her Majesty the Queen

v.

Marguerite Nelly Peers

Judge:

The Honourable Justice J.E. Scanlan

Heard:

04 December 2006, in Amherst, Nova Scotia

**Written Release
of Oral Decision:**

20 December 2006

Counsel:

Mr. Douglas Shatford, Q.C., for the crown
Mr. Robert Gregan, for the defence

By the Court:

[1] This is an application by the accused to exclude evidence obtained as the result of a search of her backpack on the early morning hours of May the 10th, 2006. The accused was a passenger seated in the right rear seat of a motor vehicle which was stopped by police after Constable Pike had run a license plate check on a motor vehicle which he thought somewhat suspicious. It was driving in the industrial park area in Amherst in the early morning hours with four or five passengers. He had simply run the license plates because of those suspicions. It turned out the license plates were in fact stolen license plates. That gave him ample authority and reason to stop the motor vehicle in question.

[2] When he stopped the motor vehicle, it became obvious to him that there was, at best confusion, and no doubt on his part, concern as to the valid ownership of the motor vehicle. I am satisfied it was appropriate that he continued to follow up. He discovered the next morning that in fact there had been a very recent transfer of ownership. It was clear to the officer at that point in time however, and this is as of the time that the motor vehicle was stopped, that he had reasonable and probable grounds to believe that there were at least stolen license plates. He placed the persons in the vehicle under arrest because of that.

[3] I do note in passing that the person who turned out to be the actual owner of the vehicle was also the girlfriend of the driver of the vehicle. I suppose had time permitted, there could have been a further inquiry that night and narrowed it down to two people. It was however not unreasonable that the officer be concerned about all the people in the car, because at that time point in time all he knew for sure was that there were stolen plates. What he did in arresting the four people I don't find unreasonable, and I find no fault in that.

[4] After the initial stop there were a number of other officers who became involved. No doubt there was concern for officer safety considering the number of passengers a single officer was dealing with. The issue was how to process and handle all the people that were in the motor vehicle. Other officers arrived at the scene and different officers were doing different things. The sergeant stayed with the motor vehicle until it was towed. The people were divided up, put in two police cruisers and taken back to the police station. None of that was unreasonable.

[5] The most important aspect of this case is what transpired as between the accused, Ms. Peers, and Constable Caissie. This application turns on the sequence of events surrounding the search of the applicant's backpack. I find no fault in Constable Caissie conducting a search of the persons, nor the other officers conducting a search of the persons. There was a valid concern for officer safety, and they were entitled to do things such as a pat down search. In this case Ms. Peers was clutching this blue bag and held it close to her person at all times. Nothing really turns on the confusion in the evidence as to whether it was placed on the ground or left on the hood of the motor vehicle. If I had to decide the issue, I am satisfied that certainly, when officer Caissie saw the blue bag, it was either between Ms. Peers' knees, near her chest, or on the hood of the vehicle at all times. That's all she saw. If she was going to let Ms. Peers keep that bag, officer Caissie was entitled to check to see whether there was anything in the bag which presented a risk to any of the officers. That is a reasonable thing for her to have done to ensure officer safety.

[6] In searching the bag, however, the search basically stopped at the pill container. I can't imagine there having been a weapon in the pill container that came before the courts. Why did she or why should she have opened it? I don't know. The search went beyond a search incidental to the arrest, in terms of looking for weapons or things that might jeopardize the security of officers, when the officer decided to open the pill bottle. She was concerned because it was a windy night and when she opened it some of the powder blew in her face, on her hands, in her mouth and her nose. She asked what it was. She was told that it was bath salts. The certificate of analysis indicates that it was not illegal drugs, or drugs of any sort.

[7] The question that I have at that point in time is, number one, should she have opened the pill bottle, and was it incidental to the search related to officer safety. The answer, I say, is no. That changes the character of what happened from that point on. Once the officer decided she wasn't going to continue the search, she secured the bag. She thought it was a narcotic that she had inhaled or that got blown on her. At that point in time what she should have done changed. Once the bag was seized because the officers suspected narcotics the search of the bag would not then be incidental to the arrest. The search would have been pursuant to some other grounds. The purpose of the search at that point in time was not to detect weapons. The bag had been seized and it was no longer a threat to any of the officers. It was locked up in the trunk of the police cruiser. The officer, upon

returning to the detachment, could then have made an application for a search warrant. She could say I opened this bag, opened this powder, and use it as grounds to seek a search warrant. It was reasonable to open it in the first place. I don't have to address the issue of how valid a search warrant might have been, but that would have been the proper process. She would say look, I opened this bag, opened this container, white powder blew on me. The evidence of the powder that was found in the bag did not relate to officer safety. Once the bag was seized a search of the bag for drugs had to be pursuant to a warrant. The eventual seizure of the drugs from Ms. Weatherbee and the money was not the result of a search relating to officer safety. It was the result of a warrantless search for drugs. The officer did not take the steps to get a warrant to continue with the search. As I said, by that time the search did not relate to officer safety. It related to an investigation as to possible drugs in the bag.

[8] I would note at that point in time the accused, Ms. Peers, had not been advised that there were any drugs found in the bag. She told the officer what was in the vial. At the time of the second search of the bag she was not advised that she was under arrest for anything drug related. She was still only under arrest for the stolen license plate. She was not given an opportunity, prior to the second search, to consult or retain counsel on the issue of drugs and the possible search of the bag. The search simply went ahead. Again it went ahead under circumstances where there was no threat to the officer safety related to the contents of the bag.

[9] There were six grams of crack cocaine found in the bag as a result of the search. The question becomes, if this was an illegal search, should the court nevertheless admit the results of the search into evidence. The question is whether to do so would bring the administration of justice into disrepute.

[10] There is an expectation of privacy when it comes to things like backpacks. I listened to the radio all morning on the way to Amherst, talking about the newly elected leader of the Liberal party. It was noted that he often carries a backpack. One can only imagine that he would be very upset should the police decide they were going to randomly search his backpack. People carry lots of things in backpacks these days, including medications that are perfectly legal. Unless the officers are satisfied as to the risk to their own security, people are entitled to expect that the police will not go rummaging through their backpacks. That holds true whether it is a backpack, suitcase or a briefcase that citizens might carry. As I said, there's a reasonable expectation of privacy.

[11] The fact that this went beyond a search for items that would endanger or possibly endanger the officers, should have been obvious when the backpack was removed from her person and put in the trunk of a car. That changed the nature of the search. I'm satisfied that for the search to continue, there would have been a requirement for a warrant. The accused should then have been advised as to her rights to counsel, and been afforded the opportunity to contact counsel. I am satisfied that to allow the evidence to be admitted under these circumstances would in fact bring the administration of justice into disrepute.

[12] Having said that, I find very little to say as against the officers in any critical way. I am just concerned the way this unfolded. Technically there should have been another step taken. Up until the point in time the pack was placed in the trunk of the car, everything that was done was appropriate.

[13] The evidence will not be admitted.

J.