

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Landry, 2002 NSSC 277

Date: 20021220

Docket: CR AM3927 (180126)

Registry: Amherst

Between:

Her Majesty The Queen

v.

Thomas William Landry

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Judge: The Honourable Justice A. David MacAdam

Heard: September 25, 2002 in Amherst Nova Scotia

Written Decision: December , 2002

Subject: Summary Conviction Appeal - Reasonable and Probable Grounds for Arrest - Scope of Review by Summary Conviction Appeal Court

Summary: Police officer observing the accused placed him under arrest for impaired driving. The Provincial Court Judge refused to admit the subsequently obtained Certificate of Analysis on the basis there were no objective reasonable and probable grounds for arresting the accused at the time he was arrested.

Issue: At issue is whether the objective grounds for the arrest must be known to the police officer at the time of the arrest and the validity of the arrest cannot be sustained by information and observation subsequently made.

Result: The validity of the arrest is to be determined on the basis of information known to the arresting officer at the time of the arrest. Although the information may be drawn from hearsay, incomplete sources or might even contain certain assumptions, it is on the facts known and understood by the police officer at the time of the arrest that a determination is made as to whether there were "reasonable and probable grounds". On the evidence, it was open to the Provincial Court Judge to find that as at the time of arrest, and even though the officer believed he had reasonable and probable grounds, there were not sufficient objective facts to constitute "reasonable and probable grounds". The trial judge could therefore have reasonably have reached the conclusion he did and the appeal is denied.