

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Durling*, 2006 NSCA 124

Date: 20061117

Docket: CAC 263729

Registry: Halifax

Between:

Her Majesty The Queen

Appellant

v.

Jennifer Cynthia Durling

Respondent

JUDGE:

MacDonald, C.J.N.S.

APPEAL HEARD:

October 5, 2006

SUBJECT:

Criminal Law, producing and possessing marijuana for the purpose of trafficking; search and seizure, *Charter of Rights and Freedoms*, s. 8.

SUMMARY:

The RCMP received a *Crime Stoppers* tip suggesting that the respondent was growing marijuana. Acting on this tip, they applied to a Justice of the Peace and received a warrant to search the home. In executing the warrant, the RCMP found evidence confirming the grow operation. The respondent was charged with producing and possessing marijuana for the purpose of trafficking.

At trial, the respondent challenged the validity of the search warrant, alleging that it was issued by the JP without sufficient information. The judge agreed and declared it quashed. This rendered the search unlawful and thereby a presumptive breach of the respondent's Charter rights. Consequently the judge excluded

the evidence obtained in the search and the respondent was acquitted.

The Crown has appealed to this court. It submits that the JP had ample evidence to justify the warrant and that the judge misapplied established legal principles in ordering it quashed. Alternatively, the Crown maintains that even had the warrant been properly quashed, the police conduct did not justify excluding the evidence obtained in the search.

ISSUE: Did the judge apply the proper legal test in reviewing the JP's decision to issue the warrant?

RESULT: Appeal allowed.

The judge misapplied established legal principles in quashing the warrant.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 14 pages.