

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** R. v. LeClaire, 2005 NSCA 165

**Date:** 20051222

**Docket:** CAC 247254

**Registry:** Halifax

**Between:**

Kenneth Andrew LeClaire

Appellant

v.

Her Majesty The Queen

Respondent

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**Judge:** The Honourable Justice Elizabeth Roscoe

**Appeal Heard:** November 9, 2005

**Subject:** Criminal Law: refusal to provide breath sample, reasonable and probable grounds to demand a breath sample

**Charter:** section 8, unreasonable search, invitation to knock

**Summary:** Following receipt of an anonymous tip of an impaired driver the police checked the license, obtained the address of the registered owner and attended at the home of the appellant. The truck matching the description was in the driveway. The garage door was open. The police proceeded through the garage and saw a man inside. They knocked on the door and the appellant opened the door. They indicated that they were investigating an impaired driving complaint and asked if they could come in. They were invited in. Observations of the appellant's physical condition led to the belief that he was intoxicated. The police read the appellant his right to remain silent and his right to retain counsel. At that time, the appellant confessed to driving the vehicle and admitted to having a couple of beers before driving. He also indicated that he had been drinking since he arrived home.

The Appellant was arrested for impaired driving and read a breathalyzer demand. After being given an opportunity to contact counsel at the police station, he refused the breathalyzer. The

Appellant was convicted at trial on the charge of refusing the breathalyzer.

**Issues:** Did the trial judge err by concluding that the unlawful entry into the garage was cured by later obtaining permission to enter the house and in finding that the officers had reasonable and probable grounds to make the demand for a breath sample?

**Result:** Appeal dismissed. In the circumstances of this case, the conduct of the police did not amount to a search within the meaning of s. 8 of the **Charter**, because their purpose when they went onto the property of the appellant was to investigate the commission of an offence, not to specifically gather evidence to use against the appellant. (**R. v. Evans**, [1996] 1 S.C.R. 8) Furthermore, on these facts, the entry through the garage in order to access a door on which to knock did not exceed the authority implied by the invitation to knock and therefore did not infringe on the appellant's reasonable expectation of privacy. The trial judge did not commit any error in concluding that the officer had reasonable and probable grounds to make the demand for a breath sample. The information giving rise to the reasonable and probable grounds included the admission by Mr. LeClaire that he had been driving a few minutes before, that he had a few beers before he drove, that he was very likely the person seen by the informant to be staggering, and the numerous physical indicia of impairment, including slurred speech, unsteadiness, glossy eyes, and a strong smell of alcohol. These factors, coupled with the officer's understanding that it takes time to get that drunk, established reasonable and probable grounds that Mr. LeClaire was impaired at the time of driving.

**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 17 pages.**