

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Timmons*, 2011 NSCA 39

Date: 20110505

Docket: CAC 329645

Registry: Halifax

Between:

Appellant

William Tracy Timmons

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Linda Lee Oland

Appeal Heard: November 15, 2010

Subject: **Entry and search without warrant - ss. 8 and 24(2) *Charter***

Summary: A mother who reported that her daughter was being abused by the appellant did not know exactly where he lived. When the police called the daughter, she said that she was fine and a friend was picking her up. She refused to say where she was. She also hung up and did not answer when called back. The name she gave of the person who was to pick her up was incorrect. The police continued to try and locate the daughter. After midnight, two hours after the call, five officers arrived at the appellant's home. Some heard what was described as a scream. The police pounded on the door. When the daughter opened it, she said that everything was fine. The police entered. They could see inside a bedroom where the appellant lying on a bed. One officer went straight there. The appellant cooperated during the pat down search. Officers then entered each room in the house. After seeing a number of items, they obtained a search warrant.

At trial, the appellant alleged breach of s. 8 of the *Charter*. In

his *voir dire* decision, the trial judge held that the police entry and the search of the house were justified. He did not discuss s. 24(2). The evidence heard on that *Charter* application was considered in the trial proper along with additional evidence obtained pursuant to the warrant. The appellant was found guilty of several drug offences.

Issue: Whether the warrantless entry and search of the home by the police was a violation of s. 8 of the *Charter*? If so, whether the evidence found as a result of the searches should have been excluded pursuant to s. 24(2) of the *Charter*.

Result: Leave to appeal granted, the appeal allowed, and the conviction set aside. In the circumstances, although the call was not a 911 call, or made by the alleged victim or from the home of the appellant, it was reasonable for the police to search for her, to go to the appellant's home, and not to simply leave once the daughter told them at the door that she was fine. However, the trial judge erred in principle by failing to consider alternatives short of police entry into the home and bedroom, and the search of the home, all without a warrant. Their authority to investigate such a call includes the police locating the alleged victim, and determining if their assistance may be required but, without more, does not extend to entry or search of premises.

The record here is insufficient for this court, at first instance, to engage in a s. 24(2) analysis.

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.