

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Hallett, Hart and Chipman, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

PHILLIP A. FOSTER

Respondent

)  
)  
) David M. Meadows  
) for the Appellant  
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)  
) Terrance R. Cooper  
) for the Respondent  
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) Appeal Heard:  
) January 22, 1992  
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) Judgment Delivered:  
) January 22, 1992  
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THE COURT:

The appeal is allowed, the acquittal is set aside and a new trial is ordered as per reasons for judgment of Chipman, J.A.; Hart and Hallett, concurring.

CHIPMAN, J.A.:

This is an appeal by the Crown from an acquittal of the respondent by His Honour Judge Cacchione of the County Court Judge's Criminal Court of District Number One following a trial on a charge that the respondent:

"On or about the 2nd day of November 1990 did unlawfully have in his possession a narcotic to wit cannabis resin for the purpose of trafficking contrary to Section 4 Subsection 2 of the Narcotic Control Act."

Some weeks prior to November 2, 1990 Sergeant Travis of the Halifax Police Department received information from two senior provincial government officials, whose names he gave in evidence, that drugs were being sold in the workplace by the respondent, a government employee. The officials brought notes from one or more employees who had complained about the sales. As a result, Sergeant Travis interviewed the informant, a government employee, who advised that he had seen the respondent at the workplace with drugs. The informant was neither a suspect nor paid nor offered any payment for the information. Sergeant Travis subsequently spoke on the telephone with the informant and on the morning of November 2, 1990 was advised by him over the telephone that the respondent had drugs at the workplace at that time.

Sergeant Travis, accompanied by Constable Martin, proceeded immediately to the Provincial Building on Hollis Street, Halifax, Nova Scotia. On the way, Travis told Martin that they were looking for the respondent who he had been advised was at the building in possession of cannabis resin.

On arrival at the Provincial Building, the officers located the respondent. Both officers identified themselves and Constable Martin, in the presence of Sergeant Travis, arrested the respondent for possession of a narcotic. He gave the respondent the proper police caution and informed him of his Charter right to counsel. The respondent was then told that he was going to be searched for cannabis resin and he thereupon told Constable Martin that he would find it in the left front pocket of his trousers. The officer there found eight pieces of cannabis resin, confirmed to be such on analysis. The officer was provided by the respondent with a piece of paper containing the names of persons with dollar amounts opposite them. The respondent's wallet was taken from his trousers. In it, Constable Martin found three separate bundles of money in the amounts of \$70.00, \$280.00 and \$305.00. He also found \$40.00 in paper money in the right front pocket of the respondent's trousers.

The respondent permitted the officers to search his locker at the workplace and there the officers discovered a pocket knife with the end of the blade filed off and a set of scales to which adhered what, on subsequent analysis, was proved to be cannabis resin.

The respondent was then taken to the Halifax Police Department where Constable Martin re-arrested him for possession of a narcotic for the purposes of trafficking. He was given a police caution and was again given his Charter right to counsel. He said he did not want a lawyer and then gave Constable Martin a

written statement. In it he said that he had sold two grams of cannabis resin that very day and that he had been selling it for two or three months. He described his operation and the use that he made in it of his scales. The trial judge, at the conclusion of the voir dire, found that the statement was voluntary and admissible.

At the trial, the respondent testified in his own defence, maintaining that although he was in possession of the cannabis resin which was the subject of the charge, it was for his own use.

In his decision, Judge Cacchione reviewed the evidence. His concern was only with the grounds for arrest possessed by Sergeant Travis, the senior officer present at the time of the arrest and who had briefed Constable Martin on the way to the Provincial Building. Judge Cacchione then referred to s. 495(1) of the Criminal Code and R. v. Storrey (1990), 53 C.C.C. (3d) 316 and R. v. Debot (1989), 52 C.C.C. (3d) 193. He concluded that the detention of the respondent was arbitrary in violation of s. 9 of the Charter and that consequently the search was in violation of s. 8 thereof. It was, he said, a warrantless and unlawful search. He then found that the statement, as well as the real evidence, consisting of the cannabis resin, the money, the knife and the scales should be excluded pursuant to s. 24 of the Charter. He acquitted the respondent "given the fact that I have no evidence before me."

The Crown's appeal is based on the following five grounds:

1. That the trial judge erred in law in holding that the arrest of the respondent contravened s. 9 of the Charter.
2. That the trial judge erred in law in holding that the search of the respondent, without a warrant, contravened s. 8 of the Charter.
3. That the trial judge erred in excluding the evidence seized during the search of the respondent, pursuant to s. 24(2) of the Charter.
4. That the trial judge erred in excluding the evidence of the statement of the respondent, pursuant to s. 24(2) of the Charter.
5. That the trial judge erred in excluding the viva voce evidence of the respondent, at trial, pursuant to s. 24(2) of the Charter.

It is only necessary to address the first of these grounds. We are satisfied that the detention of the respondent did not contravene s. 9 of the Charter and that the search consequent thereon was not in violation of s. 8 thereof.

Section 495(1)(a) of the Code provides:

"495(1) A peace officer may arrest without warrant

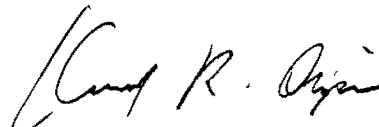
(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence,"

The evidence of the police officers reveals that the investigation was sparked by the report of two senior government officials who provided notes of complaints by government employees about the respondent's activities respecting drugs at

the workplace. Sergeant Travis conducted an investigation by personally interviewing the informant who told him that the drugs were being sold in the workplace and that he saw the drugs and that the respondent was involved with them. As well, the informant and Travis spoke on the telephone. On the day of the arrest, the informant called Sergeant Travis and advised him that the respondent was at the workplace with drugs that very day. Sergeant Travis said that he had no reason to disbelieve the respondent who was neither a suspect nor a paid informer - rather a government employee who had come forward with his concerns.


In the face of all of this evidence, it is abundantly clear that any reasonable person would conclude that there were reasonable grounds for the arrest and that the belief of the officers at the time in those grounds was reasonable.

The appeal is allowed, the acquittal is set aside and a new trial is ordered.

  
J.A.

Concurred in:

Hart, J.A. 

Hallett, J.A. 

CANADA  
PROVINCE OF NOVA SCOTIA  
1991

C.R. 11844

IN THE SUPREME COURT OF NOVA SCOTIA  
APPEAL DIVISION  
on appeal from the  
COUNTY COURT JUDGE'S CRIMINAL COURT  
OF DISTRICT NUMBER ONE

HER MAJESTY THE QUEEN

- and -

PHILIP A. FOSTER

Heard Before: The Honourable Judge Cacchione  
Place Heard: Halifax, Nova Scotia  
Dates Heard: July 2, 1991

Counsel:

D. Meadows Esq., for the Prosecution  
J. Cooper Esq., for the Defence

C A S E O N A P P E A L