

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Schofield*, 2017 NSCA 30

Date: 20170412

Docket: CAC 445688

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Aaron Troy Schofield

Respondent

Judge: The Honourable Justice Hamilton

Appeal Heard: February 9, 2017, in Halifax, Nova Scotia

Subject: Section 258(7) of the *Criminal Code*; Providing a copy of the Certificate of Analysis and reasonable notice of the Crown's intention to produce it at second trial.

Summary: The respondent was charged with driving while his blood alcohol exceeded the legal limit contrary to s. 253(1)(b). At a *voir dire* prior to his first trial, the Certificate of Analysis was ruled inadmissible. Following a successful appeal by the Crown, he was acquitted at his second trial when the trial judge found that giving the Certificate and Notice to him at around 11:51 p.m. on the date of the offence, and taking it away from him when he was put in cells at 12:17 a.m., with the intervening time spent in the back of a police car in the dark, and no proof that the Certificate and Notice was returned to the respondent when he was released from cells, did not provide the respondent with the reasonable notice required by s. 258(7).

Issues:

1. Did the trial judge err in finding the requirements of s. 258(7) were not met?
2. If so, should a conviction be entered or a new trial ordered?

Result:

Appeal allowed, conviction entered and matter referred to the trial judge for sentencing. The trial judge erred by failing to consider the role played by the Certificate and Notice in the respondent's *voir dire*/first trial, which amounted to sufficient compliance with s. 258(7). The respondent conceded that if the judge erred in not considering the Certificate, there is no further evidence required for a conviction, that the Certificate is dispositive of the outcome and would have resulted in a conviction.

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 9 pages.