

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Boliver*, 2014 NSCA 99

**Date:** 20141104

**Docket:** CAC 422908

**Registry:** Halifax

**Between:**

Richard Temple Boliver

Appellant

v.

Her Majesty the Queen

Respondent

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**Judge:**

The Honourable Justice Peter M.S. Bryson

**Appeal Heard:**

September 24, 2014, in Halifax, Nova Scotia

**Summary:**

The appellant was convicted of resisting arrest and damage to property arising from a confrontation with the police. He was also convicted of public intoxication. The police told the appellant that “he was under arrest”, but did not provide a reason because the appellant immediately and violently resisted, requiring several officers to subdue him. The appellant brought various *Charter* motions complaining that his s. 10(a) and (b) *Charter* rights had been violated because he was not told of the reason for his arrest, nor was he informed of his right to counsel. Further, he argued that he did not receive full disclosure because a lay person traveling with the police on the night in question did not provide a “can say” statement. He also complained of missing video associated with the taser deployment at the time of his arrest. He also challenged trial fairness and the factual findings of the trial judge. Following dismissal of his *Charter* motions, his appeal to the Summary Conviction Appeal Court was dismissed. He appealed to the

## Court of Appeal.

### **Issues:**

1. Did the violation of the appellant's s. 10(a) and 10(b) *Charter* rights render his arrest unlawful?
2. Did the trial judge err by not providing a remedy for the s. 10 *Charter* violations?
3. Was the appellant's s. 7 *Charter* right violated by the late disclosure of the existence of a lay witness?

### **Result:**

Appeal dismissed. Given the appellant's violent behaviour, the police were prevented from providing him then with reasons for his arrest, and therefore there was no s. 10(a) violation at that time. The subsequent violation of the appellant's s. 10 *Charter* rights had no effect on the charges against him. No evidence was obtained as a result of the violation of his rights, so there was no evidence to exclude as a result. In all the circumstances, the trial judge correctly concluded that the breaches did not warrant a remedy. The existence of a lay witness was known to the appellant's counsel, prior to trial, who did not interview him. The lay witness was only called by the Crown in response to the appellant's *Charter* motions. The trial judge gave the appellant a lengthy adjournment of some months in order to prepare for cross examination of the lay witness and to recall any other witnesses should he wish to do so. The loss of the taser related video was satisfactorily explained to the trial judge. The trial judge's other factual findings – including findings of credibility – were well supported in the record and entitled to deference.

***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 15 pages.***